

Law 103-354 must approve all membership changes (except the admission of limited partners described in §1965.63(e)(3) of this subpart) or transfers, if they do not already do so. OGC will review any proposed changes of beneficial interests in a trust to determine that all applicable program requirements have been met.

[49 FR 49590, Dec. 21, 1984, as amended at 56 FR 2257, Jan. 22, 1991]

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§ 1965.65 Transfer of real estate security and assumption of loans.

(a) *General.* The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very-low, low, and moderate income families or persons and would be in the best interests of the residents and the Federal Government.

(1) The requirements of this section apply when:

(i) Title to the security property is transferred, either when the project is sold or through a change in the borrowing legal entity, such that the new entity is considered a distinct and separate legal entity from the original borrower;

(ii) An unauthorized sale of a project has occurred or will occur through a land contract or similar contract;

(iii) The liability for the FmHA or its successor agency under Public Law 103-354 indebtedness has been or will be assumed by an organization, entity or individual who is not presently liable for the debt;

(iv) Membership interests within a borrower entity have been or will be changed 100 percent within any consecutive 12-month period as indicated by §1965.63(a) of this subpart.

(2) When the mortgage or deed of trust requires FmHA or its successor agency under Public Law 103-354 consent to the sale or other transfer or real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the borrower should notify the District Director of the proposed sale or transfer. The District Director shall then explain the requirements of this subpart.

(3) Proposed transfers must not be the detriment of the FmHA or its successor agency under Public Law 103-354 or the tenant. LH loans will only be transferred under this subpart when they will continue to be used to provide housing for farm laborers as defined in subpart D of part 1944 of this chapter. Cooperative loans will only be transferred when they will be used for the purpose of providing low income rental housing to promote the general welfare of the community.

(4) The transfer of projects as defined in §1944.205 of subpart E of part 1944 of this chapter, in which the FmHA or its successor agency under Public Law 103-354 loan transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond the borrower's control, such as:

(i) Illness or death of the principals;

(ii) Court order requiring the division of security property;

(iii) The individual borrower faces serious financial difficulties due to circumstances beyond the borrower's control, which will force him/her out of operation. These circumstances do not include transferring the property to obtain the equity needed to permit the borrower to apply for additional FmHA or its successor agency under Public Law 103-354 loans or to raise capital to support the borrower's other financial interests not including the FmHA or its successor agency under Public Law 103-354 financed project. Borrowers under this type of hardship must be able to show that they have acted in good faith, demonstrated their managerial skills and financial abilities; and otherwise complied with all other agreements made with FmHA or its successor agency under Public Law 103-354. Hardship transfers due to construction cost overruns will only be considered in the case of individual borrower accounts. (If additional funds are needed to cover cost overruns for any other type of borrower entity, consideration should be given to the admission of new partners, sale of stock, etc., under the provisions of §1965.63 of this subpart to continue ownership of the project.)

(5) When the State Director determines that a hardship is present and

the official case files have been adequately documented to clearly identify the hardship, a transfer may occur without penalty to the transferor. When a hardship is not present and the loan(s) are less than 5 years old, transfer requests should be processed but the transferor (including principals) will be ineligible for further loans or participation in the transferee or other RRH applicant entities for the remainder of the 5-year period. The start of the 5-year period begins on the date of FmHA or its successor agency under Public Law 103-354 loan closing and/or any subsequent transfer.

(6) Transfers of RRH projects with initial or subsequent loans (except loans for the purpose of repairs to existing units) that are at least 5 years old will be processed according to the provisions of this subpart without penalty to the transferor. The transferor (including the principals) may continue to participate in the RRH program through new and existing projects assuming he/she has performed satisfactorily and meets the eligibility criteria of §1944.211 of subpart E of part 1944 of this chapter.

(7) In all cases, the purchaser is required to provide evidence of its inability to obtain credit elsewhere on rates and term that will not cause rental rates in excess of what low- and moderate-income tenants could afford, considering the availability of any rent subsidies that may be available to the project.

(8) All transfers are subject to the payment application system conversion requirements in subpart K of part 1951 of this chapter.

(9) For all transfers, the District Director must review Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

(b) *State Director authority.* The State Director is authorized under §1965.55(a)(4) of this subpart to approve initial and subsequent transfers, with an appropriate assumption of the FmHA or its successor agency under

Public Law 103-354 unpaid loan balance(s) when the principal amount (including any authorized junior liens) plus accrued interest is within the State Director's loan approval authority, subject to the following general conditions and requirements:

(1) Transfers will be made to either eligible or ineligible applicants. Eligible applicants are those applicants meeting all of the eligibility criteria as defined by the appropriate loan program regulations. Ineligible applicants are those applicants failing to meet the eligibility requirements for the respective loan type. Transfers to eligible applicants will receive preference over transfers to ineligible applicants, provided recovery to FmHA or its successor agency under Public Law 103-354 is not less than it would be if the transfer were to an ineligible applicant.

(i) Transfers to eligible applicants will generally be completed on the basis of the same terms if the loan account is current or can be brought current when the transfer and assumption is closed.

(ii) Transfers to eligible applicants desiring to assume delinquent loans which cannot be brought current at the time of closing, and transfers to ineligible applicants, will be transferred on the basis of new terms.

(2) The approval official must determine that the security is adequate for the FmHA or its successor agency under Public Law 103-354 indebtedness being assumed. If the State Director determines that the total secured FmHA or its successor agency under Public Law 103-354 debt(s) exceeds the present market value of the security, the transferee must assume an amount at least equal to the present market value less any prior liens. In those cases, the transferor will be released from liability and the remaining debt will also be processed according to the applicable provisions of subpart B of part 1956 of this chapter. When the present market value of the security equals or exceeds the debt the transferee will assume the total FmHA or its successor agency under Public Law 103-354 secured debt(s). Security will be upgraded if necessary to meet FmHA or its successor agency under Public Law 103-354 standards.

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(3) The transferor shall not receive an equity payment as part of a transfer unless:

(i) All unpaid FmHA or its successor agency under Public Law 103-354 indebtedness against the property is assumed;

(ii) All real estate and personal property taxes owned by the project are current;

(iii) All FmHA or its successor agency under Public Law 103-354 loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of FmHA or its successor agency under Public Law 103-354 and the tenants; and

(vi) When the transfer is NOT being made in connection with a request for prepayment of the FmHA or its successor agency under Public Law 103-354 loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(1) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(2) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(3) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those identified in the transferee's organizational documents approved by FmHA or its successor agency under Public Law 103-354;

(4) The seller does not and will not have a reversionary interest in the

FmHA or its successor agency under Public Law 103-354 encumbered property;

(5) In the case of a limited partnership, the right of FmHA or its successor agency under Public Law 103-354 to approve or disapprove the substitution of general partners in accordance with §1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA or its successor agency under Public Law 103-354 for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does not include the general partners' interests;

(6) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all FmHA or its successor agency under Public Law 103-354 requirements of this section; and

(7) An assignment of project income will be taken by FmHA or its successor agency under Public Law 103-354 in accordance with the requirements of §1944.221(b) of subpart E of part 1944 of this chapter as additional security with the advice and guidance of OGC;

(vii) When the transfer is being made to avert prepayment of the FmHA or its successor agency under Public Law 103-354 loan, an equity loan may be made in accordance with the provisions of subpart E of this part and subpart E of part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by FmHA or its successor agency under Public Law 103-354 in the prepayment valuation of the project, the provisions of paragraph (b)(3)(vi) of this section will apply.

(4) No payment will be received by the transferor for regular equity or equity in connection with a prepayment action unless all FmHA or its successor agency under Public Law 103-354 loans against the project are assumed in full or the payment to the transferor is applied in total against non-FmHA or its successor agency under Public Law 103-354 prior liens. The State Director may require that all or a part of any equity payment be applied against other FmHA or its successor agency under

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Public Law 103-354 loans owed by the borrower on other FmHA or its successor agency under Public Law 103-354 projects owned by the borrower that are not current, if the FmHA or its successor agency under Public Law 103-354 loans against the project being purchased are assumed in full and all prior liens paid in full.

(5) Upon completion of the transfer there must be no liens, judgments, or other claims against the security being transferred other than those by FmHA or its successor agency under Public Law 103-354 and those authorized liens to which FmHA or its successor agency under Public Law 103-354 has previously agreed, unless prior written approval is obtained from the National Office.

(6) When the loan(s) is secured by both chattel and real estate, all chattel security must be transferred, sold, or liquidated by the time of closing the transfer of the real estate.

(7) The transferee must complete and submit Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for the State Director's approval as required by §1901.203 of subpart E of part 1901 of this chapter.

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through use of Form FmHA or its successor agency under Public Law 103-354 1965-9, "Multiple Family Housing Assumption Agreement and Form FmHA or its successor agency under Public Law 103-354 1965-10, 'Information on Assumption of Multiple Family Housing Loans,' on the same rates and terms if the account is current or new rates and terms if the account is not current. If the spouse is determined to be an eligible applicant according to applicable provisions of the respective loan program and this Subpart, the approval official may waive the submission by the assuming spouse of any form or material not required by OGC to complete the assumption, if the present forms and materials in the current casefile are otherwise acceptable.

(9) The transfer must be completed with the advice and closing instructions of the OGC.

(10) The rents to the tenants can be increased only if the provisions of paragraph XI of exhibit B to subpart C of part 1930 of this chapter are met.

(11) The transferee will be required to submit reports according to §1930.122 of subpart C of part 1930 of this chapter.

(12) Forms FmHA or its successor agency under Public Law 103-354 1944-50, "Multiple Family Housing Borrower/Project Characteristics" and 1944-51, "Multiple Family Housing Obligation—Fund Analysis" must be processed in accordance with their respective FMIs for all transferees to update the accounting system.

(c) *Transfers to eligible applicants.* Transfers of security with an assumption of FmHA or its successor agency under Public Law 103-354 debts by transferees who are eligible applicants for the type of loan being assumed may be approved subject to the general conditions contained in paragraph (b) of this section and the following:

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in exhibits A-1 or A-2 of subpart E of this part.

(2) All necessary repairs to assure that the housing will be decent, safe and sanitary should be made prior to the transfer whenever possible. When repairs cannot be completed prior to closing, the necessary funds will be escrowed and the repairs will be identified, agreed upon prior to closing and documented as specified in §1924.5 of subpart A of part 1924 of this chapter. Also, any improvements required by FmHA or its successor agency under Public Law 103-354 to meet the accessibility requirements of section 15b.41 of subpart F of part 15b of subtitle A (see §1944.215(b)(6) of subpart E of part 1944 of this chapter) should be considered part of any substantial rehabilitation work undertaken as part of the transfer. All repairs will be in accordance with the provisions of subpart A of part 1924 of this chapter. Funds for such improvements or repairs will be from sources in the following priority: Transferor's equity payment; contributions by the transferee; reserve account being transferred provided the

amount remaining in the reserve account will be adequate to meet the repairs and expenses in the immediate or near future; if loan funds are available, from the use of an RRH or LH loan when appropriate.

(3) For rental and RCH (as applicable) projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of exhibit E to subpart C of part 1930 of this chapter.

Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA or its successor agency under Public Law 103-354, reserve and other accounts must be at the scheduled level at the time of transfer.

(4) Any excess development funds held in a supervised bank account must be refunded to the respective loan account upon receipt of the transfer request.

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with subpart E of this part to avert prepayment.

(6) The transferees must prepare operating budgets, as required by the appropriate program regulations governing the kind of loan being transferred, covering the first partial year and the next full year's operation. The budgets must be realistic and reflect sufficient funds to pay operation and maintenance expenses, fund any required reserve, and keep the FmHA or its successor agency under Public Law 103-354 account(s) current. The charges

for the use of the facility or services must be within the payment ability of those it is intended to serve. A current utility allowance must also be prepared when required by program regulations.

(7) For transfers of RRH and RCH loan accounts, current executed tenant and former member certifications using Form FmHA or its successor agency under Public Law 103-354 1944-8, "Tenant Certification," or a HUD approved form of "Certification or Recertification of Tenant Eligibility" for any tenants receiving Section 8 subsidy, must be on file with FmHA or its successor agency under Public Law 103-354 or provided for each tenant, as required by Exhibit B to subpart C of part 1930 of this chapter, evidencing that the units are or will be occupied by tenants meeting the FmHA or its successor agency under Public Law 103-354 eligibility requirements when the transfer is closed.

(8) For transfers of RRH and LH loan accounts, all leases should also be assigned to the transferee no later than the date of closing.

(9) The proper type of loan agreement or loan resolution for the type of transferee involved must be in effect and secured in the mortgage or deed of trust at the time of transfer. If changes are needed in the existing loan agreement or loan resolution to accomplish this, amendments must be made to the existing loan agreement or resolution secured by the mortgage on the security property with the advice of the transferee's attorney and approval of OGC or by any other method acceptable to OGC. If the RRH transferee wishes to convert to the loan agreement/resolution format of Form 1944-33, "Loan Agreement"; 1944-34, "Loan Agreement"; or 1944-35, "Loan Resolution", as appropriate, the transferee may accomplish this by amending the existing loan agreement/resolution with the advice of transferee's attorney and concurred in by OGC.

(10) When the transfer is NOT being made in connection with a request for prepayment of the FmHA or its successor agency under Public Law 103-354 loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as

that originally provided to the transferor. However, if a loan to a nonprofit or profit type borrower is being transferred to a limited profit type transferee, the initial investment to be shown in the loan resolution or agreement will be "None" unless an exception is made by the State Director. (The State Director's authority to establish initial investment will not be delegated to other State Office staff.) Any initial investment established by the State Director should not exceed the amount shown in the transferor's loan agreement/resolution with a rate of return which will not exceed the rate set forth in §1944.215(n) of subpart E of part 1944 of this chapter when the transfer is approved. An exception will be considered when the following conditions are met and fully documented in the casefile:

(i) The transferee contributes funds for repairs or authorized improvements beyond those which would have been paid from the transferor's equity as indicated in paragraph (c)(2) of this section, or

(ii) The transferee contributed sufficient cash to reduce the loan principal being assumed to no more than 95% (97% for loan agreements dated on or after March 11, 1988) of the original development cost (unless an exception is made in writing by the National Office), or

(iii) The transferee's total contributions for the repairs and debt reduction identified in paragraphs (c)(9) (i) and (ii) of this section, exceed 5% (3% for loans approved on or after March 11, 1988) of the purchase price, or

(iv) The transfer is referred to the National Office with the appropriate recommendations and a request to establish an initial investment for the transferee for those cases in which the State Director requests advice and assistance.

(11) When the transfer is being made to avert prepayment of the FmHA or its successor agency under Public Law 103-354 loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of subpart E of this part.

(12) If the transfer involves an RRH or RCH loan using interest credit with

a Form FmHA or its successor agency under Public Law 103-354 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," in effect, the transferee may also receive interest credit by executing a new Form FmHA or its successor agency under Public Law 103-354 1944-7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a non-subsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to exhibit H to subpart C of part 1930 of this chapter. A new Form FmHA or its successor agency under Public Law 103-354 1944-7 will be executed by the transferee, attached to Form FmHA or its successor agency under Public Law 103-354 1965-10, "Information on Assumption of Multiple Family Housing Loans," and a copy of Form FmHA or its successor agency under Public Law 103-354 1944-50, and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form FmHA or its successor agency under Public Law 103-354 1944-50 should have been established when the transfer was approved.

(13) A transferee may participate in the RA program if the transferor's project is an eligible project and the transferee is an eligible borrower according to exhibit E to subpart C of part 1930 of this chapter. If the transferor participates in the RA programs, the transferee may assume the remaining portion of the transferor's RA agreement when the transferee is eligible. When the transferee is assuming the transferor's RA agreement, Form FmHA or its successor agency under Public Law 103-354 1944-55, "Multiple Family Housing Transfer of Rental Assistance," will be executed and attached to the new or existing Form FmHA or its successor agency under Public Law 103-354 1944-27. A copy of Form FmHA or its successor agency under Public Law 103-354 1944-55 and a copy of Form FmHA or its successor agency under Public Law 103-354 1944-50 will be attached to Form FmHA or its successor agency under Public Law 103-

354 1965-10 and forwarded to the Finance Office. If the transferee will not be assuming an existing RA agreement, the agreement will be suspended by memorandum to the Finance Office. Subsequently, the State Director must transfer the suspended RA unit(s) to another project(s), using Form FmHA or its successor agency under Public Law 103-354 1944-55, in accordance with exhibit E of subpart C of part 1930 of this chapter.

(14) If a project operates under the HUD Section 8 program, the Housing Assistance Payment (HAP) contract must also be assigned to the transferee with prior approval from HUD. This approval must be obtained so that the assignment of the HAP contract occurs no later than the closing of the transfer.

(15) The transferee must thoroughly understand all loan requirements including the tenant eligibility, management, reserve account, audit, and reporting requirements of applicable FmHA or its successor agency under Public Law 103-354 regulations; and the loan agreement or loan resolution and the content of the signed Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement." Before the transfer is closed the District Director shall carefully review with the transferee subpart L of part 1944 of this chapter, subpart C of part 1930 of this chapter, the applicable loan program regulations, and the loan agreement or resolution with the transferee.

(16) Release of liability will be considered according to the following:

(i) When all FmHA or its successor agency under Public Law 103-354 security is transferred and the total outstanding debt is assumed, the transferor will be released from liability.

(ii) In those cases where the value of the security transferred and debt assumed is less than the full amount of the FmHA or its successor agency under Public Law 103-354 debt, the transferor may be released from liability if the State Director determines that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer, and certifies that the transferor has cooperated in good faith, has used due

diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of the borrower's ability. The approval official must execute a memorandum containing the following statement for inclusion in the official case file.

(Transferor's name), in our opinion, does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of personal liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security property.

(d) *Transfers to ineligible applicants.* The transfer of an FmHA or its successor agency under Public Law 103-354 loan account to a transferee who is an ineligible applicant for the type of loan involved will be considered only when the transfer is needed as a method for servicing a problem case in which the objectives of the original loan cannot be realized and an eligible transferee is not available. Transfers will not be considered when they basically serve as a method or provide a means by which members of a borrower-organization can obtain an equity payment, or when they serve basically as a method of providing a source of credit for purchasers. The State Director is authorized to approve transfers to ineligible applicants, subject to the general conditions of paragraph (b) of this section and the following:

(1) Ineligible applicants can only be approved when a downpayment is made equivalent to a minimum of 10 percent of the remaining loan balance to be assumed. Each ineligible transferee will be encouraged to make as large a downpayment on the FmHA or its successor agency under Public Law 103-354 secured indebtedness as the transferee is financially able.

(2) The transferee must have the ability to pay the FmHA or its successor agency under Public Law 103-354 debt(s) according to the assumption agreement and must possess the legal

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capacity to enter into the contractual agreement.

(3) The balance of the FmHA or its successor agency under Public Law 103-354 indebtedness assumed must be scheduled for repayment in 2 years or less for RHS accounts, and usually 10 years or less for other types of multiple family loan accounts. If longer terms are needed for LH, RRH, or RCH projects with multiple unit structures, the State Director may authorize longer terms up to 20 years. (Single Family type structures may be sold on terms for 15 years or less.) Amortized monthly or annual installments will be charged with interest to the transferee at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note(s) being assumed, whichever is greater. Form FmHA or its successor agency under Public Law 103-354 1965-9 will be executed by the transferee.

(4) The State Director may release the transferor from liability under the same provisions as stated in paragraph (c)(14) of this section only when all of the real estate security for a loan is transferred, the total outstanding indebtedness or that portion of the debt equal to the present market value of the security is scheduled for repayment in five years or less from the date of the assumption agreement.

(5) When an ineligible transferee assumes an FmHA or its successor agency under Public Law 103-354 loan where the present borrower has personal liability and it is scheduled for repayment in more than 5 years from the date of the assumption agreement, the transferor must acknowledge their continued liability for the debt by signing an agreement as follows:

CONTINUED LIABILITY AGREEMENT OF PRESENT DEBTORS

The undersigned hereby acknowledges the continued personal liability for the indebtedness owed to the FmHA or its successor agency under Public Law 103-354 and assured by _____ (assuming parties) under assumption agreement dated _____.

Date

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's District Office case folder, and a copy provided the transferor.)

(6) Transfers to ineligible applicants of loans made on or after December 21, 1979, will not be authorized without the prior consent and authorization of the National Office. Authorization must be requested in writing and include all the information required in paragraph (e) of this section.

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to be operated in conformance with FmHA or its successor agency under Public Law 103-354 instructions. If it is determined by FmHA or its successor agency under Public Law 103-354 that the housing is no longer needed to house eligible tenants in accordance with the provisions of subpart E of this part, the restrictive-use provisions may be released.

(8) Those loans which are transferred to ineligible applicants will be classified as Nonprogram Property (NP) and serviced according to this subpart to the extent possible. Those cases which cannot be serviced according to this subpart will be forwarded to the National Office for advice and guidance.

(e) *Submission to National Office.* In those cases where the proposed transfer cannot be made in compliance with paragraphs (a) and (b) or (c) of this section, the State Director may submit the entire proposal, complete with all the case files, the State Director's specific recommendations and justifications to the National Office for review, consideration, and any special instructions for handling the account(s). The State Director must have determined prior to submission however, that it is in the best interest of the FmHA or its successor agency under Public Law 103-354 to permit the transfer before submitting the proposal for consideration. All transfers where the total indebtedness (principal and interest) exceed the State Director's approval authority must be submitted to the National Office for prior review and authorization to approve the transfer request.

(f) *Processing transfers.* (1) Form FmHA or its successor agency under Public Law 103-354 465-5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, charges to the loan account other than principal and interest, future dated payments presently credited to the account, assignment of project accounts and leases, and other appropriate items. Additional information may also be attached to this form when necessary to fully describe the proposed transaction. The transfer will become effective the date Form FmHA or its successor agency under Public Law 103-354 1965-9 is executed.

(2) Form FmHA or its successor agency under Public Law 103-354 1965-9 will be executed according to the FMI. The unpaid principal balance and accrued interest to be shown on Form FmHA or its successor agency under Public Law 103-354 1965-9 and 1965-10 will be determined by accessing the project account record via field terminal. When this is not possible, the unpaid principal balance, accrued interest, and any other charges will be computed from Form FmHA or its successor agency under Public Law 103-354 1951-53, "Multiple Family Housing Transaction Record" or Form FmHA or its successor agency under Public Law 103-354 451-11, "Statement of Account." The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date and, any payments required to bring any monthly or annual payments current, and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan account or the reserve account cannot be brought current, or less than the total debt is assumed, the transfer will be closed on new terms and the interest rate charged by FmHA or its successor agency under Public Law 103-354 will be the current rate being charged for those loans at the time of loan closing,

or the interest rate at the time of approval (the date Form FmHA or its successor agency under Public Law 103-354 1944-51 is approved), whichever is less.

(3) When the property transferred will continue to be used for the same or a similar purpose for which Federal financial assistance was extended, the transferee must sign Form FmHA or its successor agency under Public Law 103-354 400-4.

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) An FmHA or its successor agency under Public Law 103-354 designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA or its successor agency under Public Law 103-354 designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA or its successor agency under Public Law 103-354 designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be prepared according to the requirements of FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may NOT be accepted from the transferor or transferee for the initial appraisal required of FmHA or its successor agency under Public Law 103-354 under provisions of subpart E of this

part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA or its successor agency under Public Law 103-354 prepared appraisal are:

(i) The expense of the appraisal will be paid by the transferee or transferor without obligation to FmHA or its successor agency under Public Law 103-354.

(ii) The appraisal will be prepared by an accredited Senior Real Property Appraiser (SRPA), Senior Real Estate Analyst (SREA) or Member, Appraisal Institute (MAI) real estate appraiser. The State Appraiser/Trainer may accept an appraisal report from other than an accredited SPRA, SREA or MAI appraiser if he or she determines that:

(A) There are no accredited appraisers within a reasonable distance from the project location, and

(B) The individual preparing the appraisal has satisfactorily completed a minimum of 80 hours of accredited appraisal courses.

(iii) The appraisal report form will be Form FmHA or its successor agency under Public Law 103-354 1922-7, "Appraisal Report for Multi-Unit Housing," or the Federal Home Loan Mortgage Corporation form, FHLMC Form 71A, and it will include adequate documentation to support the appraised value and the qualifications of the appraiser.

(iv) The total FmHA or its successor agency under Public Law 103-354 debt will be assumed by the transferee.

(v) A review of the appraisal will be made by the State Appraiser/Trainer according to FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) using Form FmHA or its successor agency under Public Law 103-354 1922-13, "Reviewer's Appraisal Analysis."

(vi) The appraised value of the property is sufficient to secure the existing FmHA or its successor agency under Public Law 103-354 debt, planned subsequent FmHA or its successor agency under Public Law 103-354 loan(s), and any authorized junior liens.

(5) Form FmHA or its successor agency under Public Law 103-354 1965-9 will

be executed according to the FMI when the full debt will be assumed at the same rate and terms. The loan account(s) must be current at the time of the transfer and the reserve account on schedule, less any authorized withdrawals, if the transfer is to be at the same rate and terms.

(6) Form FmHA or its successor agency under Public Law 103-354 1965-9 will be executed according to the FMI when an account cannot be brought current at the time of transfer or less than the full debt is assumed. The loan repayment period may be extended to the maximum term authorized by the appropriate loan program, considering the value and economic life of the security. Transfers on new terms are also subject to the following conditions:

(i) The interest rate charged for all loans, except LH loans, will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA or its successor agency under Public Law 103-354 1944-51 is approved), whichever is less. The interest rate of LH loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farmworkers, and broadly-based nonprofit corporations for LH purposes may be at a one percent interest rate regardless of the rate specified in the note if the State Director determines that the reduction is necessary in order to maintain rental rates at a level affordable to the tenants. If the State Director determines that the transfer at one percent is necessary for other types of LH transferees, the case should be submitted to the National Office, with the State Director's recommendations and justifications for consideration.

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and transferred through the use of Form FmHA or its successor agency under Public Law 103-354 1965-9 shall be converted to a monthly payment amortization and are subject to PASS.

(iii) LH loans may continue to be transferred on a DIAS basis or may be converted to PASS when the approval official determines such a conversion

will not be detrimental to the successful operation of the project.

(7) The following paragraph is to be inserted in Form FmHA or its successor agency under Public Law 103-354 1965-9 whenever the full amount of equity has not been paid in cash or through an equity loan made by FmHA or its successor agency under Public Law 103-354 to avert prepayment:

The assuming party covenants and agrees that irrespective of any other agreement to the contrary, (a) no present or future lien(s) have or will be attached to the partnership property encumbered by FmHA or its successor agency under Public Law 103-354 or the income therefrom, (b) the equity payable to the seller will be provided from outside sources or from any authorized return on investment and not from a planned sale of the project, (c) the right of FmHA or its successor agency under Public Law 103-354 to approve or disapprove the substitution of partners in a general or limited partnership transferee organization (this phrase may be stricken when the transferee is an individual) has not and will not be superseded by any agreement between the purchaser and seller that implies prior consent by FmHA or its successor agency under Public Law 103-354 on partner changes in the case of default, (d) the seller does not and will not have a reversionary interest in the FmHA or its successor agency under Public Law 103-354 encumbered property, and (e) the requirements of § 1965.65 of FmHA or its successor agency under Public Law 103-354 Instruction 1965-B (7 CFR part 1965) have been met.

(8) All RRH, RCH, and LH loans, including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate exhibits A-1 or A-2 in accordance with §§ 1965.214(g) and 1965.216(c)(3) of subpart E of this part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restric-

tive-use period will begin on the date the transfer and assumption is closed.

(9) When the transfer docket forms are completed, the approval official must determine that:

(i) The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc., are clearly documented in the casefile.

(ii) Each form is prepared correctly according to the FMI or other appropriate regulations, and

(iii) 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.

(10) The District Director will record in the Running Case Record or in memo form, the pertinent information concerning the negotiations made between an eligible transferee, FmHA or its successor agency under Public Law 103-354 personnel, the applicant's creditors, and other lenders concerning the availability of other credit. The investigation on the availability of other credit for eligible transferees will be documented in the case file as required for the kind of loan being assumed. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain credit elsewhere on rates and terms that would not cause rental rates to be in excess of what low and moderate income tenants could afford will be included in the docket.

(11) A compliance review should be conducted as required by subpart E of part 1901 of this chapter, if a current one has not recently been completed.

(12) The District Director will forward the transferee's application docket and the official case file, with any comments and recommendations to the State Office. The following table will be used as a guide in distributing the necessary forms for a transfer docket:

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
*SF 424.2	Application for Federal Assistance (For Construction) ..	3	1	2-O&1C	1-O.
*HUD Form 2530/FmHA or its successor agency under Public Law 103-354.	Previous Participation Certification	2	1	2-O&1C	1-C.
1944-37	*Information to be Submitted with Preapplication for Loan as required by program regulations specifically related to applicant eligibility.	2	0	1-O	1-C.
	*Letter of Application with applicable attachments as required in Subpart G of Part 1822 of this chapter or of Subpart D or E of Part 1944 of this chapter.	2	1	1-O	
	**Evidence of Legal Authority (Copies of citation of specific provisions of State Constitution, statutory authority, etc.).	2	1	1-O	1-C.
	**Proof of Organization (certified copy of Charter, Articles of Incorporation, or Certificate of Limited Partnership, etc.).	2	1	1-O	1-C.
	**Certified copies of bylaws, partnership agreement, or regulations.	2	1	1-O	1-C.
	**List of names, addresses and social security or Tax Identification Numbers of officers, directors, and members, and ownership interest held by each.	2	1	1-O	1-C.
	A current financial statement from the transferee, and others, as required by appropriate program regulations.	2	1	1-O	1-C.
	*Credit Report(s)				
FmHA or its successor agency under Public Law 103-354 465-5.	Transfer of Real Estate Security ²	3	1-O	1-O	1-C.
*FmHA or its successor agency under Public Law 103-354 1930-7.	Statement of Budget and Cash Flow (Excluding Depreciation) (Operating Budget—first year) (Operating Budget—typical year).	2	2-O&1C	1-O	1-C.
*Exhibit A-6 to Instruction 1944-E.	Housing Allowances for utilities and Other Public Services.	3	2-O&1C	1-O	1-C.
HUD 935.2	Affirmative Fair Housing Marketing Plan	2	2-O&1C	1-O	1-C.
*FmHA or its successor agency under Public Law 103-354 400-1.	Equal Opportunity Agreement	2	2-O&1C	1-O	1-C.
*FmHA or its successor agency under Public Law 103-354 400-4.	Assurance Agreement	2	2-O&1C	2-O&C	1-C.
FmHA or its successor agency under Public Law 103-354 1944-50.	Multiple Family Housing Borrower/Project Characteristics.	3	1	

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<i>FmHA or its successor agency under Public Law 103-354 1944-51.</i>	Multiple Family Housing Obligation/Fund Analysis	3	2-O&1C	1-O	1-C.
<i>FmHA or its successor agency under Public Law 103-354 451-26.</i>	Transaction Record (most recent)	1	.....	1	
<i>*FmHA or its successor agency under Public Law 103-354 451-10.</i>	Request for Statement of Account	2	.....	2-O&C	
<i>*FmHA or its successor agency under Public Law 103-354 451-11.</i>	Statement of Account	1	.....	1	
<i>*FmHA or its successor agency under Public Law 103-354 451-25.</i>	Status of Account	1	.....	1	
<i>*FmHA or its successor agency under Public Law 103-354 1922-7.</i>	Appraisal Report for Multi-Unit Housing (see paragraph (f)(4) of this section.	1	.....	1-O	
<i>*FmHA or its successor agency under Public Law 103-354 1922-13.</i>	Reviewer's Appraisal Analysis .....	.....	.....	.....
<i>*FmHA or its successor agency under Public Law 103-354 1922-8.</i>	Uniform Residential Appraisal Report	1	.....	1-O	
<i>*FmHA or its successor agency under Public Law 103-354 426-1.</i>	Valuation of Buildings	1	.....	1-O	
<i>*FmHA or its successor agency under Public Law 103-354 424-1.</i>	Development Plan	2	1-O	2-O&C	1-C.
<i>*FmHA or its successor agency under Public Law 103-354 1965-9.</i>	Multiple Family Housing Assumption Agreement	4	1-O	1-O	1-O.
<i>*FmHA or its successor agency under Public Law 103-354 1965-10.</i>	Information on Assumption of Multiple Family Housing Loans.	2	1	1-O .....	.
<i>*FmHA or its successor agency under Public Law 103-354 1965-18.</i>	Multiple Family Housing Release from Personal Liability.	2	.....	1-C	1-C.
<i>*FmHA or its successor agency under Public Law 103-354 440-9.</i>	Supplementary Payment Agreement ¹	3	1-O	2-O&C	1-C.
<i>*FmHA or its successor agency under Public Law 103-354 1944-7.</i>	Interest Credit and Rental Assistance Agreement (RRH and RCH loans). ¹	3	1-O	1-O	1-C.
<i>*FmHA or its successor agency under Public Law 103-354 1944-27.</i>	Rental Assistance Agreement	2	1-O	1-O	1-C.

RHS, RBS, RUS, FSA, USDA

\$ 1965.65

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
	*Loan Agreement	2	1-O	1-O	1-C.

O—Original; C—Copy.
 *—When applicable.
 **—When applicable is an organization.
 1—The original Form will not be executed until date of closing the transfer.
 2—When requested, prepare an additional copy for delivery to transferor.
 3—Applicant must sign and date this form unless a similar certification is obtained on the application form. For ineligible transferees, delete the first sentence referring to other credit in item 42 of the form. The applicant must initial each deletion.

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Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property, purchase contract or other instrument of ownership, assignment of HUD Section 8 Housing Assistance Payments contract, and information on prior or junior mortgage(s). When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making instruction. (Subsequent loans will not be made to pay equity unless authorized in accordance with subpart E of this part to avert prepayment.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer:

(i) Identity of Interest statement between transferor and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with exhibit B of subpart C of part 1930 of this chapter,

(iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with exhibit B of subpart C of part 1930 of this chapter.

(v) Option or purchase agreement,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget.

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,

(ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for.

(x) If needed, a request for initial operating funds and a detailed breakdown

of expenses anticipated to be paid from the funds, and

(xi) District Office comments and recommendations and the State Office evaluation.

(14) If the transfer is within the State Director's loan approval authority, the docket will be forwarded to OGC for review and necessary closing instructions. If the transfer is not within the State Director's loan approval authority, or all planned development is not complete; the complete transfer docket, borrower case file, OGC comments, and complete comments and recommendations of both the District and State Director will be forwarded to the National Office for review and approval authorization.

(15) During the period that a transfer is pending in the District Office, payments received by the Finance Office will continue to be applied to the transferor's account. Those payments include any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record will be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

(i) *Identification.* Payments received on the date of transfer will be remitted as Regular payments on Form FmHA or its successor agency under Public Law 103-354 1951-55 "Collection Log." The payments will be credited to the transferor's borrower and project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.

(ii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should if possible, be collected at the time of transfer and remitted in the transferee's name.

(g) *Closing transfer cases.* (1) Title clearance and legal services, including OGC closing instructions, will be obtained according to subpart B of part 1927 of this chapter.

(2) 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. The attorney or the title insurance company and their principals or employees must not be members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and is earned.

(3) The transferee will obtain fire and extended coverage insurance, and flood insurance when required, according to the appropriate program requirements for the outstanding loan(s) involved, unless the State Director requires additional insurance as a condition of approval after evaluating the potential for loss due to special hazards associated with the project. When insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA or its successor agency under Public Law 103–354 debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(4) The proper type of loan agreement or resolution for type of transferee involved must be in effect at the time of the transfer. If changes are needed in the existing loan agreement or resolution cited in the mortgage, the changes should be made by amending the existing loan agreement or resolution after obtaining the advice of OGC.

(5) The restrictive language contained in §1944.176(d)(1) of subpart D of part 1944 of this chapter and §1944.236(b)(1) of subpart E of part 1944 of this chapter must be inserted in the deed of conveyance or other instruments as required by OGC for RRH, RCH, and LH loans.

(6) At a time no later than the transfer closing, the transferee will be pro-

vided copies of the security instruments (promissory note, mortgage or deed of trust, rental assistance agreement, loan agreement of resolution, etc.) which were executed by the transferor or previous borrower to originally secure the loan being assumed.

(7) A servicing visit should be scheduled within 90 days of closing to verify the transferee's compliance with program requirements.

(h) *Transfer not completed.* If for any reason a transfer will not be completed after approval, the District Director will immediately notify the State Director.

[49 FR 49587, Dec. 21, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1965.65, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§§ 1965.66–1965.67 [Reserved]

§ 1965.68 Consolidation.

General. Loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), to improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities common to projects. State Directors may approve the consolidations with the advice of OGC and when the following conditions are met:

(a) *Consolidation of loans.*

(1) The loans are being transferred under §1965.65(f)(6) of this subpart on new terms to the transferee, OR.

(2) An initial and subsequent loan(s) under one project number were closed on the same date at the same rates and terms, i.e., same interest rate and final due date.

(3) The promissory notes and the loan agreements/resolutions will be consolidated.

(4) The conditions for consolidation of loan agreements/resolutions must be met.

(5) The total indebtedness (principal plus accrued interest, overage and late fees) of all loans being consolidated does not exceed the State Director's approval authority.

(6) If consolidation of loans is not possible on the Amortization Effective