

(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

Date (AED) for the loans, consolidation should occur as soon as possible after the AED is established.

(b) *Processing consolidation of loans.*

(1) Form FmHA or its successor agency under Public Law 103-354 1944-52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA or its successor agency under Public Law 103-354 1944-52 is processed, or as soon as possible thereafter. Promissory notes should be prepared on a monthly payment basis, as appropriate.

(2) A new Form FmHA or its successor agency under Public Law 103-354 1944-7, "Interest Credit and Rental Assistance Agreement," will be prepared and signed by the borrower for the new consolidated promissory note and distributed according to the FMI. The Interest Credit Plan originally established for the project will apply to the consolidated note. If the Interest Credit Plan is changed with the new Form FmHA or its successor agency under Public Law 103-354 1944-7, the District Office will enter the new plan for the project through their field office terminal.

(3) Form FmHA or its successor agency under Public Law 103-354 1965-17, "Multiple Family Housing Note Consolidation," will be completed to show all of the notes which have been consolidated in the new Form FmHA or its successor agency under Public Law 103-354 1944-52. A copy of the completed Form FmHA or its successor agency under Public Law 103-354 1965-17 will be sent to the Finance Office for processing. The AMAS M5A screen for the project should be reviewed by the District Office and updated, as appropriate, when submitting Form FmHA or its successor agency under Public Law 103-354 1965-17 for processing.

(4) The original and District Office copies of all notes or assumption agreements that are consolidated will be stamped "consolidated," by the Dis-

trict Office. The original instruments being consolidated will be stapled to the "consolidated" note and filed in the safe in the District Office. When the consolidated note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of §1951.15 of subpart A of part 1951.

(5) A consolidated loan agreement or resolution using Forms FmHA or its successor agency under Public Law 103-354 1944-33A, "Consolidated Loan Agreement RRH Insured Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis," FmHA or its successor agency under Public Law 103-354 1944-34A, "Consolidated RRH Loan Agreement To a Partnership Operating on a Profit Basis, To a Limited Partnership Operating on a Profit Basis, To a Partnership Operating on a Limited Profit Basis, To a Limited Partnership Operating on a Limited Profit Basis," or FmHA or its successor agency under Public Law 103-354 1944-35A, "Consolidated Loan Resolution RRH Loan to a Broadly Based Nonprofit Corporation, RRH Loan to a Profit Type Corporation, RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis," as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(6) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory notes be consolidated if the security position of FmHA or its successor agency under Public Law 103-354 will be adversely affected.

(7) New security instruments which describe the consolidated note will be filed to perfect the FmHA or its successor agency under Public Law 103-354 lien position. If the new lien position taken is junior only to the previous lien position securing the loans being

consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(c) *Consolidation of loan agreements/resolutions (project consolidation)*. (1) The security for the loans must be on the total project, "project" being defined per subpart C of part 1930 of this chapter.

(2) The State Director may approve the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan agreements/resolutions being consolidated.

(3) The loan agreements being consolidated are for loans made for the same purpose (for example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects, unless the consolidated project is redesignated "mixed" and the units previously designated "senior citizen" are restricted to tenants meeting the requirements for "senior citizen" as specified in exhibit B of subpart C of part 1930 of this chapter), to the same borrower entity and have the same plan of operation (nonprofit, limited profit or full profit), and are operating under the same type of Interest Credit, if applicable.

(4) The requirements of subpart C of part 1930 of this chapter concerning reporting, accounting and project management will be fulfilled as a single project.

(5) All project accounts being consolidated must be current after the consolidation processes, unless authorized by the National Office.

(6) RA agreements will not be consolidated; each RA agreement will be tracked under a separate RA number through AMAS. The RA can be assigned to eligible tenants in the new "project" per assignment priorities. The waiting list(s) for the projects being consolidated will be combined.

(7) For consolidation of loan agreements/resolutions of loans in which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A-1 of subpart E of this part for RRH, RCH or LH loans will be added,

with the advice of OGC, to the loan agreement/ resolution and security instruments as a condition of FmHA or its successor agency under Public Law 103-354 approval of the action. The restrictive-use period will begin on the date the consolidation is effective.

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be pre-paid.

(d) *Processing loan agreement/resolution consolidations*. (1) Form FmHA or its successor agency under Public Law 103-354 1965-17A will be completed to show all of the notes for the projects being consolidated. The AMAS M5A screen for all projects should be reviewed and updated before submitting Form FmHA or its successor agency under Public Law 103-354 1965-17A.

(2) A consolidated loan agreement or resolution using Form FmHA or its successor agency under Public Law 103-354 1944-33A, 1944-34A, or 1944-35A, as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(3) Consolidation of projects will only be accomplished with the guidance and assistance of OGC. Under no circumstances will projects be consolidated if the security position of FmHA or its successor agency under Public Law 103-354 will be adversely affected.

(4) All of the general requirements of paragraph (c) of this section must be met.

(5) Neither the terms nor the due date of the loan(s) involved are altered, and other security instruments remain unchanged, and are not released.

(6) All of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects if required by OGC.

[56 FR 25351, June 4, 1991, as amended at 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993; 62 FR 25070, May 7, 1997]