

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest.

(1) If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(2) Persons who exercise substantial influence over the oversight or operations of a multi-family housing project, regardless of their ownership status have a controlling interest in the housing project.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.307 and must reflect any changes made during the 12-month

period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§ 3560.406 Multi-family housing ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to

the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items.

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A 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.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) 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.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions.

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part.

(2) The transferee or buyer must 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.

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to