



Rural Development

December 4, 2019

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Administrator

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TO: State Directors
Rural Development

ATTN: Program Directors
Multi-Family Housing

FROM: Bruce W. Lammers /s/ *Bruce W. Lammers*
Administrator
Rural Housing Service

SUBJECT: Reserve Accounts for Multi-Family Housing Properties
(Supervised Bank Accounts)

PURPOSE

The purpose of this Unnumbered Letter (UL) is to provide Rural Development State Office and Area Office Loan Servicers an updated Sample Deposit Account Control Agreement (DACA) to establish and maintain Supervised Bank Accounts for Multi-Family Housing (MFH) properties. This UL supersedes the UL issued September 28, 2018, “Reserve Accounts for Rural Development’s Multi-Family Housing Properties (Supervised Bank Accounts).”

BACKGROUND

MFH borrowers had previously identified certain procedures and requirements within Rural Development’s regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds. This is mainly due to the current electronic banking operations.

The September 28, 2018, UL provided that MFH will no longer require MFH countersignatures for approved withdrawals from the project’s accounts and borrowers were no longer required to obtain a collateral pledge if the amount of funds exceed the maximum limit covered by Federal deposit insurance. The UL further directed that funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place. This UL continues those terms and provides an updated DACA.

EXPIRATION DATE:
November 30, 2020

FILING INSTRUCTIONS:
Housing Program

AGENCY ACTION

The following guidance is being provided with respect to MFH Supervised Bank Accounts:

- 7 CFR 3560.306(e)(2) and 7 CFR 1902.4(a)(1) - The Agency is no longer required to countersign approved withdrawals from reserve accounts. In addition, MFH employees will no longer have to present their Federal Government ID to the bank as they will no longer be listed as an additional signer on the commercial bank account; and
- 7 CFR 3560.302(c)(5)(ii) and 7 CFR 1902.6(d) and 1902.7(a) - Borrowers are no longer required to obtain a collateral pledge if the amount of funds exceed the maximum limit covered by Federal Deposit Insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place.

Attached is the DACA, which has been updated to better define and clarify the rights, authorizations, and protections of MFH and the Financial Institution, including but not limited to the following:

- Renamed the agreement from “Deposit Agreement” to “Deposit Account Control Agreement”;
- Provisions for termination of Account(s) and the Agreement (e.g., amount of notice required and to whom, what happens to the funds in the Account(s));
- Provision allowing MFH to notify the Financial Institution of its exclusive control of the Accounts;
- Expressly authorizing the financial institution to comply with the borrower’s instructions unless contrary to instructions received from MFH;
- Allowing the financial institution to set-off “Unpaid Items” as defined in the Uniform Commercial Code (e.g., checks deposited with insufficient funds); and
- Provision requiring the borrower to obtain additional surety as a collateral pledge from the current Financial Institution for reserve account funds on deposit that exceed the limit for Federal Deposit Insurance.

IMPLEMENTATION

Beyond the actions mentioned above, all other Supervised Bank Accounts requirements contained in 7 CFR 1902 Subpart A for MFH reserve accounts remain unchanged. The Rural Development DACA may be used for all financial accounts required by MFH projects, in accordance with 7 CFR 3560.302(c). The electronic transfer of reserve account funds is permitted if the new fully-executed DACA is in place. Borrowers choosing to execute the updated DACA should contact their local servicing official.

The approval process for the withdrawal of reserve account funds has not changed. MFH’s written approval must be obtained prior to the withdrawal of any reserve account funds per 7 CFR 3560.306 and MFH HB-2-3560, Chapter 4, Section 3. If MFH finds any unauthorized usage of account funds, MFH will take the appropriate servicing actions.

Please direct any questions regarding this UL to your assigned Portfolio Management Analyst or any staff member of the Portfolio Management Division.

Attachment - Exhibit A "DEPOSIT ACCOUNT CONTROL AGREEMENT"

DATE

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Development - Multi-Family Housing
DEPOSIT ACCOUNT CONTROL AGREEMENT

NAME AND ADDRESS OF DEPOSITOR

DEPOSITOR TAXPAYER IDENTIFICATION NUMBER

AGENCY NAME AND ADDRESS

DEPOSITOR ACCOUNT NUMBER

NAME AND ADDRESS OF BANK, SAVINGS ASSOCIATION, OR CREDIT UNION

THIS AGREEMENT (hereinafter, Agreement) is made on _____, between the United States of America, acting through the United States Department of Agriculture (hereinafter, "Government"), the above-named Depositor(s) (hereinafter, "Depositor"), and the above-named bank, savings associations, or credit union accounts, (hereinafter, "Financial Institution").

In consideration of loans or other advances of funds deposited by the Government into the Depositor's account or accounts (hereinafter, "Accounts") held by the Financial Institution, and of moneys, derived from such loans or other advances of funds, or moneys otherwise obtained by the Depositor, the parties agree as follows:

Security Interest: The Depositor assigns, transfers, and pledges to the Government the above-mentioned Accounts, made before or after this Agreement, and conveys to the Government a security interest, consistent with paragraphs 5 and 8 below, in all loans or other advances of funds deposited in the Accounts, as security for the repayment of any and all indebtedness now or later owed by the Depositor to the Government, and for the performance of the obligations and agreements of the Depositor in connection with such advances or indebtedness.

Rights to Deposit Accounts.

The Financial Institution and the Government agree to allow Depositor full access to the Accounts unless Financial Institution receives written instructions stating otherwise from the Government. Except as otherwise provided in this Agreement, the Financial Institution shall comply with the Depositor's disposition instructions.

Depositor and Financial Institution agree that Financial Institution will comply with Government's instructions directing disposition of the funds in the Accounts without further consent or approval by the Depositor.

- (i) Financial Institution shall implement Government's instructions regarding the Accounts, including payment of the Accounts balance, within two (2) business days.
 - (ii) Government instructions regarding the Accounts shall control, supersede, and have priority over any instructions from Depositor.
 - (iii) At any time upon written notice of termination by the Government, the Financial Institution shall terminate and distribute the Account balance consistent with paragraph 8 below. The death, disability, or insolvency of the Depositor shall not impair the Government's rights of termination and withdrawal.
- (c) At any time upon written request from the Government, Financial Institution shall forward a statement to the Government, at the address shown above, showing activity in the Accounts, including sufficient information to reconcile the Accounts.
3. Fees and Charges. The Depositor agrees to pay all charges of the Financial Institution in effect for the performance of the services set forth in this Agreement. Further, if there are insufficient funds in the Accounts to cover the fees, returned items, settlement amounts, or any other unpaid items related to the Accounts, Depositor shall reimburse Financial Institution immediately upon demand.
 4. Setoff. The Financial Institution agrees that it will not assert any right of setoff or recoupment, except service charges, returned items, adjustments or corrections of posting or encoding errors as provided in the Financial Institution's account service documentation with the Depositor, with respect to the funds deposited in the Accounts by reason of any indebtedness or claim now or later owed to or acquired by it.
 5. Control of Deposit Account. The Financial Institution agrees that it will not, for the purpose of the Uniform Commercial Code ("UCC"), obtain or assert "control" over the Accounts or enter into an agreement with any other creditor allowing that creditor to have "control" of the Accounts or the funds on deposit therein and that it hereby subordinates any security interest it may have or claim in the Accounts or in the funds on deposit therein to the security interest granted to the Government in this Agreement. Notwithstanding anything herein to the contrary, the Financial Institution does not subordinate its statutory security interest under UCC Section 4-210.
 6. Exculpation of Bank. The Depositor and Government agree that the Financial Institution shall have no liability to either of them for any loss or damage that either or both may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by its provisions, unless occasioned by the gross negligence or willful misconduct of the Financial Institution. The Financial Institution shall be under no obligation with respect to the expenditure of funds after their withdrawal from the Financial Institution in accordance with the provisions of the Agreement. Upon making payment pursuant to an order or check duly executed by the Depositor, or pursuant to the written demand or order of the Government, the Financial Institution shall be discharged from all obligations with respect to the funds so released.
 7. Indemnification by Depositor. Depositor agrees to indemnify the Financial Institution and hold it harmless from and against any and all claims, other than those ultimately determined to be founded upon gross negligence or willful misconduct of the Financial Institution, and from and against any damages, penalties, judgements, liabilities, losses, or expenses (including reasonable attorney fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by the Financial

Institution through the use of any account at the Financial Institution pursuant to the procedures provided for or contemplated by this Agreement.

8. Termination of Agreement. This Agreement continues in full force until terminated (a) by Financial Institution on 30 days' written notice to the Government at the address noted below, (b) by the Government upon the Financial Institution's receipt of written notice of termination, or (c) by the Depositor with the prior written consent of the Government, upon the Financial Institution's receipt of written notice of termination. Unless otherwise agreed by the Government in writing, the security interest and rights to funds in the Accounts granted to the Government in the Agreement shall survive the termination of this Agreement. Upon termination of this Agreement, the Financial Institution will direct any remaining funds in the Account pursuant to the Government's instructions.
9. Miscellaneous.
 - (a) This Agreement may be amended only by a written instrument executed by the Government, the Financial Institution and the Depositor acting by their respective duly authorized representatives.
 - (b) This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, but neither the Depositor nor the Financial Institution shall be entitled to assign or delegate any of its rights or duties under this Agreement without first obtaining the express prior written consent of the Government.
 - (c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and other same instrument.
 - (d) This Agreement is an agreement between the Financial Institution and the Depositor governing deposit accounts within the meaning of UCC Section 9-304(b). The designation of the Financial Institution's address as the jurisdiction ("Jurisdiction") for purposes of the UCC shall be controlling in the event of any conflict between this Agreement and any other agreement between the Financial Institution and the Depositor governing the Accounts.
 - (e) This Agreement shall be governed by federal law which, for purposes of this Agreement, includes Article 9 of the UCC as adopted in the Jurisdiction of the Financial Institution.
10. Notices. Any communication between the Government and the Financial Institution regarding the Accounts or otherwise related to this Agreement, including but not limited to a demand or order by the Government to pay over funds in the Accounts, to provide Government with account information or statements, to terminate this Agreement, or to close the Accounts shall be sent in writing and delivered to the Government or the Financial Institution as applicable at their respective addresses noted below, unless either party provides written notice of a change of its address to the other party, and the other party has a reasonable time to act thereon.
11. Legal Process and Insolvency. In the event the Financial Institution receives any form of legal process concerning the account, including, without limitation, court orders, levies, garnishments, attachments, and writs of execution, or in the event the Financial Institution learns of any insolvency proceeding concerning Depositor, including, without limitation, bankruptcy, receivership, and assignment for the benefit of creditors, the Financial Institution will provide the Government with prior notice before responding to such legal process or knowledge of insolvency as required by law.
12. Federally Insured Deposits. The Financial Institution must be a member of the Federal Deposit Insurance Corporation (FDIC). The Depositor shall ensure that the balance in each Account does not exceed the federally insured limit by moving excess funds to a different account where the funds are

insured by the FDIC, unless the Financial Institution provides additional surety, such as a collateral pledge, covering the amount of funds on deposit in excess of the federal insurance limit.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement, as of the day and year first written above.

FINANCIAL INSTITUTION,

DEPOSITOR,

BY: _____

BY: _____

(Title)

(Title)

Address

UNITED STATES OF AMERICA,
acting through the
UNITED STATES DEPARTMENT OF
AGRICULTURE

BY _____
(Signature)

(Title)

Address

NOTE TO FINANCIAL INSTITUTION: Please return the signed original and copy to the Government Agency office address listed on the front of this form.