



September 28, 2018

Rural Development

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TO: State Directors
Rural Development

ATTN: Multi-Family Housing Program Directors

FROM: Joel C. Baxley /s/ *Joel C. Baxley*
Administrator
Rural Housing Service

SUBJECT: Reserve Accounts for Rural Development's Multi-Family
Housing Properties (Supervised Bank Accounts)

PURPOSE

The purpose of this Unnumbered Letter (UL) is to inform Rural Development (RD) State Office and Area Office Loan Servicers of the changes to policies and procedures for establishing and maintaining supervised bank accounts of Multi-Family Housing (MFH) properties.

BACKGROUND

MFH properties rely on funds from the project's reserve account to meet the major capital expense needs of the project. Servicing Officials have a responsibility to maintain close oversight and ensure that MFH project reserve account funds are being disbursed accurately and securely, and pursuant to the requirements in 7 CFR part 3560.

The current regulations at 7 CFR 3560.306(b) require that a project's reserve account be established as a Supervised Bank Account and is subject to the requirements of 7 CFR part 1902, subpart A. MFH borrowers currently must obtain the Agency's countersignature on Supervised Bank Accounts under 7 CFR 3560.306(e)(2) and 1902.4(a). Also, any amount held by the depositor over the maximum amount insurable by the federal government must be collateralized under 7 CFR 3560.302(c)(5)(ii), 1902.6(d), and 1902.7(a).

AGENCY ACTION

MFH borrowers have identified certain procedures and requirements within RD's regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds.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 current electronic banking operations. Therefore, the Agency is relieving MFH borrowers of these problematic requirements.

EXPIRATION DATE:
September 30, 2019

FILING INSTRUCTIONS:
Housing Programs

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 should 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.

IMPLEMENTATION

The Agency will require borrowers and banking institutions to execute the new Deposit Agreement, which shall supersede any prior Deposit Agreement, within 120 days of this UL. Besides the regulatory sections specifically listed in this UL, all other Supervised Bank Account requirements for reserve accounts shall remain unchanged.

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

To assist field offices with the change in procedure, a revised Sample Deposit Agreement is included as Exhibit A. An executed original Deposit Agreement must be maintained as an Essential Record in the Electronic Customer File (i.e., scan and file). If banking institutions prefer the use of their own deposit agreement over RD's Deposit Agreement, then the banking institution's deposit agreement must be reviewed and approved by RD's Regional Office of General Counsel to make sure that it meets the Agency's requirements. This UL will soon be followed by a change to MFH's HB-2-3560, Chapter 4 and an official OMB Deposit Agreement.

Once approved, electronic transfer of Reserve funds will be permitted if the new fully-executed Deposit Agreement is in place. The Multi-Family Information System (MFIS) must be maintained with appropriate authorizations and withdrawals.

Servicing Officials are to bring this guidance to the attention of MFH borrowers and management agents to ensure they understand the new procedures. Please direct any questions regarding the subject of this UL to your assigned Portfolio Management Analyst or any staff member of the Portfolio Management Division.

**UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Development -Multi-Family Housing**

SAMPLE DEPOSIT AGREEMENT

NAME AND ADDRESS OF DEPOSITOR(S) SOCIAL SECURITY OR IRS NO.

AGENCY NAME AND ADDRESS DEPOSIT ACCOUNT NO.

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

THIS AGREEMENT is made on _____, between 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 and Loan, or Credit Union, (hereinafter, "Financial Institution").

In consideration of loans or other advances of funds made by the Government and the depositing in the Financial Institution, to the credit of the Depositor in the account or accounts (hereinafter, "account") established pursuant to this agreement, of moneys, derived from such loans or other advances of funds, or moneys otherwise obtained by the Depositor, it is agreed as follows:

1. **Security Interest: Government.** The Depositor assigns, transfers, and pledges to the Government the above-mentioned account and deposits, made before or after this agreement, and conveys to the Government a security interest in all money deposited in this account, 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.
2. **The Financial Institution Agrees To:**
 - a. Comply with instructions originated by the Government directing disposition of the funds in this account without further consent or approval by the Depositor;
 - b. At any time upon written demand or order by the Government, pay over to the Government the balance then on hand, or any part of the balance demanded. The death, disability, or insolvency of the Depositor shall not impair the power of the Government to demand or order such withdrawal;

- c. At any time upon written demand or order by the Government, forward a statement showing account activity, including sufficient information to reconcile the account, to the Government Office at the address shown above.
3. **Setoff.** The Financial Institution agrees that it will not assert any right of setoff or recoupment, except service charges, with respect to the funds deposited pursuant to this agreement by reason of any indebtedness or claim now or later owed to or acquired by it.
4. **Control of Deposit Account.** The Financial Institution agrees that it will not, for the purpose of the Uniform Commercial Code, obtain or assert "control" over this account or enter into an agreement with any other creditor allowing that creditor to have "control" of this account or the funds on deposit therein and that it hereby subordinates any security interest it may have or claim in this account or in the funds on deposit therein to the security interest granted to the Government in this Agreement.
5. **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.
6. **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.
7. **Statements and Other Information.** The Financial Institution shall notify the Government if the account is closed, by sending written notification to the Government Office at the address noted above.
8. **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 the deposit account within the meaning of Section 9-304(b) of the Uniform Commercial Code ("UCC"). 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 this account.

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.

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)

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

BY _____

(Title)

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