

(c) See FmHA or its successor agency under Public Law 103-354 Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office) for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this subpart include both loan and grant recipients. They are referred to as depositors in the deposit agreements herein-after described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA or its successor agency under Public Law 103-354.

(e) Banks referred to in this subpart are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Savings and Loans referred to in this subpart are those in which deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

(g) Credit Unions referred to in this subpart are those in which deposits are insured by the National Credit Union Administration (NCUA).

(h) Financial Institutions as referred to in this subpart include banks, savings and loans, and credit unions which are covered by the proper insurance coverage cited in paragraphs (e), (f) and (g) of this section.

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between the borrower, the United States of America acting through the FmHA or its successor agency under Public Law 103-354, and the Financial Institution on Form FmHA or its successor agency under Public Law 103-354 402-1, "Deposit Agreement".

(j) Form FmHA or its successor agency under Public Law 103-354 402-1 provides for the deposit of funds in a supervised bank account to assume the performance of the borrower's obligation to FmHA or its successor agency under Public Law 103-354 in connection with a loan and grant.

(k) "Interest-Bearing Deposit Agreement" (Exhibit B), provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing de-

posits, and it is executed in conjunction with Form FmHA or its successor agency under Public Law 103-354 402-1.

[46 FR 36106, July 14, 1981, as amended at 50 FR 8584, Mar. 4, 1985; 53 FR 35670, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989; 59 FR 3778, Jan. 27, 1994; 59 FR 54788, Nov. 2, 1994]

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, § 1902.1 was amended in paragraph (a) by revising the words "Form FmHA or its successor agency under Public Law 103-354 1944-51" to read "Form RD 3560-51" in both places, effective February 24, 2005.

§ 1902.2 Policies concerning disbursement of funds.

(a) The Automated Data Processing System (ADPS) will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in certain instances. e.g.:*

(1) When a construction loan is made and the construction is substantially completed, but a small amount is being withheld pending completion of landscaping or some similar item, or a small loan closing. In this case, the amount of funds not disbursed when the predetermined amortization effective date occurs may be placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. Those District and County Offices authorized to request checks by the ADPS may request more than one check at a time. If more than one check is required, a Form FmHA or its successor agency under Public Law 103-354 440-57 or Form FmHA or its successor agency under Public Law 103-354 1944-57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need

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not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the Loan Approval Official.

(4) Supervised bank accounts will be used only when needed as defined in paragraph (a)(6) of this section to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA or its successor agency under Public Law 103-354 and other lenders when the accounts are no longer required.

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA or its successor agency under Public Law 103-354 402-1 when the District Director or County Supervisor determines it is needed as defined in paragraph (a)(6) of this section to assure that the funds will be available for replacement of the property.

(6) When it is determined by the County Supervisor and requested or agreed to by the borrower that special supervision is needed in the management of the borrower's financial affairs, funds may be deposited in a supervised bank account. This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his/her financial affairs. Such a period will not exceed one year unless extended by the District Director.

(7) In exceptional cases when the unincorporated EO cooperative or grazing association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in §1902.6 (and §1902.2(f) of this subpart if another lender is involved).

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested through the State Office terminal. Subsequent checks will be ordered as needed through the ADPS system.

(c) Program instructions provide information as to the type of note to be

utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from the loan closing date or date of check whichever is later. For association and organization type loans interest will accrue from the date the check is delivered to the borrower. For all RRH, RCH, LH or RHS loans, interest will accrue from the date of the check.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the FMI for Form FmHA or its successor agency under Public Law 103-354 1940-1, (and Form FmHA or its successor agency under Public Law 103-354 1944-51, for multiple family housing), the Finance Office will forward the remaining balance to the District Director or County Supervisor for appropriate action, unless the District Director or County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA or its successor agency under Public Law 103-354 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," (or Form FmHA or its successor agency under Public Law 103-354 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," for multiple family housing loans) in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office).

(f) The debt instruments executed at the time of loan closing constitute an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

[46 FR 36106, July 14, 1981, as amended at 50 FR 8584, Mar. 4, 1985; 53 FR 35670, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989; 55 FR 21524, May 25, 1990; 59 FR 54788, Nov. 2, 1994]

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, § 1902.2 was amended in paragraph (d) by revising the words "Form FmHA or its successor agency under Public Law 103-354 1944-51" to read "Form RD 3560-51" and in paragraph (e) by revising the words "Form FmHA or its successor agency under Public Law 103-354 1944-53" to read "Form RD 3560-53," effective February 24, 2005.

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to be processed through the ADPS system.

(b) When check(s) are delivered to the District or County Office, the District Director or County Supervisor will make sure that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The District Director or County Supervisor should be sure that the check is properly endorsed to insure payment to the intended recipient. Examples of such restrictive endorsements are:

(1) "For Deposit only to Account No. (Number of Construction Account) of (Name of Borrower) in (Name of Financial Institution)."

(2) "Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of _____.

(c) When necessary and only under the circumstances listed in § 1902.2 the District Director or County Supervisor will establish, or cause to be established, a supervised bank account. Funds deposited in a supervised bank account are to be recorded and accounted for on Form FmHA or its successor agency under Public Law 103-354 402.2, "Statement of Deposits and Withdrawals."

[46 FR 36106, July 14, 1981, as amended at 53 FR 26588, July 14, 1988; 53 FR 35670, Sept. 14, 1988; 54 FR 39727, Sept. 28, 1989]

§ 1902.4 Establishing MFH reserve accounts in a supervised bank account.

(a) *General requirements.* All MFH borrowers required to maintain reserve accounts must place the reserve accounts in a supervised bank account(s) which meets the following requirements:

(1) *Countersignature requirements.* The reserve account must require that any funds withdrawn be countersigned by an authorized FmHA or its successor agency under Public Law 103-354 official.

(2) *Restrictions on collateral.* The financial institution holding the reserve account must ensure that the funds are not pledged or taken as security without the Agency's prior consent.

(3) *Interest bearing.* The reserve account funds are encouraged to be maintained in an interest-bearing account. The "Interest-Bearing Deposit Agreement" set out in exhibit B of this subpart is not required to be used for reserve accounts.

(4) *Restricted investments.* Reserve funds must be placed in investments authorized in subpart C of part 1930 of this chapter. The authorized investments are deemed to be of acceptable risk such that the potential for any loss is minimal.

(5) *Financial institutions.* The reserve account must be maintained in authorized financial institutions set out in subpart C of part 1930 of this chapter (e.g., banks, savings and loan institutions, credit unions, brokerage firms, mutual funds, etc.). Generally, any financial institution may be used provided invested or deposited funds are insured to protect against theft and dishonesty. The reserve account funds need not be Federally insured. However, if Federally insured, any amount held above the Federal insurance ceilings established must be backed by a pledge of collateral from the financial institution, or otherwise covered by non-federal insurance against theft and dishonesty.

(6) *Rules where multiple projects are involved.* A reserve account(s) must be maintained for each borrower. When a borrower owns multiple projects, reserve accounts may be established for each project. A single reserve account may also be established by a borrower owning multiple projects, provided the conditions set out in subpart C of part 1930 of this chapter are met.

(7) *Term.* Reserve accounts are expected to be kept for the full term of the loan.

(b) *Deposits and account activity statements—(1) Deposits.* Generally, the