

November 27, 2007

SUPPORTING STATEMENT

7 CFR Part 1902-A, Supervised Bank Accounts

A. Justification

1. Explain the circumstances that make the collection of information necessary.

Clearance is requested to extend the reporting requirements continued in this regulation, in accordance with the Paperwork Reduction Act.

The Rural Housing Service (RHS) is the credit agency for agriculture and rural development in the U.S. Department of Agriculture (USDA). RHS is the lender of last resort, providing financial support for housing in rural America.

In the past, the Farm Service Agency has utilized this form, however, due to their streamlining of their regulations, they no longer use this form.

This regulation prescribes the policies and responsibilities for the use of supervised accounts. In carrying out its mission as a supervised credit Agency, this regulation authorizes the use of supervised accounts for the disbursement of funds. The supervised accounts are used on a comparatively limited basis. The use may be necessitated to disburse Government funds consistent with the various stages of any development (construction) work actually achieved. Another use is for depositing multi-housing reserve account funds in a manner requiring Agency co-signature for withdrawals, to ensure Government security is adequately protected against fraud, waste, and abuse. A supervised account is also used to provide credit counseling and oversight to those being assisted who demonstrate an inability to handle their financial affairs responsibly.

The legislative authority for requiring the use of supervised accounts is contained in Section 339 of the Consolidate Farm and Rural Development Act (CON ACT), as amended (7U.S.C. 1989), and Section 510 of the Housing Act of 1949 (Housing Act), as amended (42 U.S.C. 1480). These provisions authorize the Secretary of Agriculture to make such rules and regulations as deemed necessary to carry out the responsibilities and duties RHS is charged with administering.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

A discussion of how supervised accounts are established is set out in this regulation. Basically, accounts are established by executing an appropriate deposit agreement, obtaining the necessary signatures of the participating parties, and depositing the money into the account, with an appropriate check endorsement if checks are used. There are several

types of Deposit Agreements that may be used, depending on whether they are interest bearing, non-interest bearing, or established for the supervision of non-RHS funds.

Should funds deposited in supervised accounts exceed Federal insurance levels, a collateral pledge may also be required to protect against the potential loss of those otherwise non-Federally insured funds. Funds exceeding the levels of Federal insurance coverage may also be required to be collateralized against loss by executing collateral pledge.

Guidance on how accounts are established, monitored and closed is also provided in this regulation. In general, this monitoring relies on the reserve account statement prepared by the institution in which such accounts reside. Such statements are periodically forwarded to the Agency (normally no more than one a year) for its use in monitoring compliance with Agency regulations governing such accounts, (i.e. the establishment of the accounts, the maintenance of the accounts at the agreed upon levels, the withdrawal of funds from the accounts in an agreed upon manner, etc.).

A discussion of who uses supervised accounts is also set out in this regulation. Supervised accounts are used by RHS personnel to deposit funds that are to be disbursed to borrowers at different stages of construction as a result of some unforeseen delay. Normally, such funds are ordered as needed and disbursed directly to borrowers to cover costs incurred with construction after reports or inspections confirm that work was performed satisfactorily. Supervised accounts are also used by those multi-housing borrowers who are required to establish a reserve account also use supervised accounts. Supervised accounts are used to monitor funds received by the borrower as a result of subordination agreements, assignments of income, also used to monitor funds usage by borrower under a financial counseling servicing plan.

The purpose of supervised accounts is to reduce the potential for fraud, waste, and abuse. Supervised accounts are used to temporarily store funds until agreements entered into can be finalized, such as when loan or grant funds must be held until conditions established for release are met, or when borrower funds must be held until conditions for action such as a partial release of security or a consent to sale are met. Supervised accounts are also used for multi-housing reserve account to subject these permanent funds to co-signature by the Agency before capital improvements or other reserve fund usage is authorized. In addition, supervised accounts are used as a servicing tool, for short periods of time in unusual circumstances, to provide financial counseling to those having difficulty upholding their responsibilities. Often these are borrowers who have entered into loan servicing or workout plans.

The consequence to Federal program and policy activities if the collection of the described information was not conducted would be detrimental to both the Government and to borrowers. Removing a means to ensure loan and grant funds meet the conditions for disbursement before release could provide greater opportunities for fraud, waste and abuse. Eliminating the use of supervised accounts for a financial counseling tool would be detrimental to both the Government and the borrower, as the prospect for monetary default would likely be greater

without this servicing tool. Also, permitting reserve accounts to be used without requiring Agency co-signature on withdrawals could provide greater opportunities for fraud, waste and abuse.

The Office of the Inspector General (OIG) has issued audit warnings and report findings highlighting that reserve funds are being withdrawn without Agency approval and are being used for purposes which are not consistent with program objectives. Subjecting reserve accounts to countersignature should reduce the level of fraud, waste, and abuse occurring in the Agency's multi-housing programs.

Specifically, the burden to be cleared with this docket is as follows:

1902.1(I)(j). Deposit Agreement

A deposit agreement will be typically used to hold funds in a non-interest bearing account for a short period of time. This agreement may be used for any program administered by the Agency which may require the holding of funds for very short periods of time in a non-interest bearing account.

1901.1(k). Interest Bearing Deposit Agreement

A deposit agreement will be typically used to hold funds in an interest bearing account for relatively short periods of time. This agreement may be used for any program administered by the Agency which may require the holding of funds in an interest bearing account for a temporary period of time.

1902.4. Co-signature MFH Withdrawals

Where multi-housing accounts are involved, it will be necessary to subject the withdrawal of reserve account funds to co-signature by an authorized RHS Official. Reserve accounts must therefore be established and used in the manner set out in Agency regulations.

1902.7. Collateral Pledge

Collateral pledges will be required in some instances under Agency regulations. Collateral pledges are primarily required when funds are over the Federal insurance thresholds (i.e. over \$100,000).

1902.14. Reconciliation of Accounts

A reconciliation of accounts is required under some circumstances to verify account balances and fund usage. This is done primarily when concerns arise over the accuracy of borrower records or when unusual servicing efforts are warranted, such as a need to confirm whether the accounts were used as intended for authorized purposes.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

The burden associated with the use of supervised accounts is relatively small; however, it does presently require signatures to be manually executed and presented in person or by mail. Presently, the electronic transmission of signatures is not recognized as being legally valid by the courts, in part because the quality of the transmission under existing technology is not as good as original signatures. The volume of activity is also low enough that acceptance of preauthorized signatures for permitting deposits and withdrawals by designated parties via telephone or electronic transmission (i.e., telefax) is not warranted.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The frequency of activity is expected to be low; therefore, there is little opportunity to curtail duplicative reporting burden because there will be little duplication in the information collected. Furthermore, Agency personnel will be the ones primarily preparing the forms, relegating the involvement of the public to primarily a reading of the instruments involved and executing a signature on the instruments.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The information collected will often be obtained from small businesses or small nonprofit entities. The forms are considered to contain that information essential to establish supervised accounts. No automation requirements are being imposed, and the data solicited has been reviewed by the Agency to ensure that only essential information needs are requested.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Collection less frequently, when used in conjunction as conditions for an approval action, would remove an effective deterrent against abuse. Requiring disbursement of loan or grant funds needed for construction after construction inspections is a prudent Government lending practice. The Government will often order funds for delivery in anticipation that construction schedules and problem resolution schedules will be met. When unexpected problems arise in meeting agreed upon time frames, temporary placement of funds in a supervised account is a prudent Government lending practice.

Collection less frequently, when used in conjunction as a financial counseling tool, may result in a slight increase in delinquencies. Financial counseling is a prudent lending practice of Federal agencies charged with providing supervised credit. However, it should be noted that this tool is sparingly used for those cases when financial counseling will be received in a cooperative atmosphere to overcome difficulties.

Collection less frequently, when used in conjunction with reserve account actions, would not serve as a sufficiently effective deterrent to prevent abuse. Recent OIG audits indicate that reserve fund abuses are sufficiently common to warrant modification of existing Agency policies. Examples involving millions of dollars which were improperly withdrawn from reserve accounts are used for no-project purposes were cited by the OIG. As a result of the findings, the Agency agreed to adopt policy aims at reducing reserve fund abuses.

The Agency considered the option of requiring co-signatures on reserve account withdrawals only after a borrower first evidenced an inability to adhere to the responsibilities agreed upon as a condition for the loan (i.e., a borrower fails to report financial information need to determine if regulations governing reserve account were broken, uses reserve funds for unauthorized purposes, fails to obtain prior Agency consent for the withdrawal of reserve account funds, etc.). The Agency did not adopt this option because policies aimed at preventing abuses were judged more effective than relying on policies requiring Agency detection of abuses and the use of scarce Agency resources in attempting to recover misused funds.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

a. Requiring respondents to report information more than quarterly.

No quarterly reports are required.

b. Requiring written responses in less than 30 days.

No written response is due in less than 30 days.

c. Requiring more than an original and two copies.

The public is not required to provide two or more copies of information.

d. Requiring respondents to retain records for more than 3 years.

The public is not required to retain records for more than 3 years.

e. Not utilizing statistical sampling.

Sampling is not used because the information collected is unique to borrower circumstances and is not standard. The information required describes changes in borrower operations and is of a legal nature. Sampling is not appropriate in such circumstances.

f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

There is no required statistical sampling; therefore, there is no deviation from any approved or reviewed OMB sampling method.

g. Requiring a pledge of confidentiality.

There is no required pledge of confidentiality.

h. Requiring submission of proprietary trade secrets.

There is no required submission of proprietary trade secrets.

In summary, this regulation is consistent with the information collection and reporting requirement guidelines established. There are no special circumstances causing and information collection to be conducted in a manner warranting an exception to the standard reporting requirement guidelines.

As disclosed elsewhere, the information solicited from the public will seldom exist anywhere else, therefore, alternative existing sources of information or modification of any existing sources of information will be rare and would not be practical to implement. Such information would likely be limited in scope. Information on the name and address of the borrower may be an example of information that would be duplicative in nature. However, borrower name and address information will in most cases be filled in by Agency personnel from Agency files and merely confirmed as accurate by the borrower.

8. If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

A Federal Register Notice was published on October 9, 2007, [72 FR 57287]. No comments were received.

The following members of the public were contacted regarding the reporting burdens associated with this regulation:

John I. Huff
Huff and Sons Construction Company
12200 Fox Run Parkway
Opelika, Florida
334-749-0052

Ray Hamilton
Hamilton Corporation
3556 S. Culpepper, Suite 7
Springfield, Missouri 65804
417-883-7887

Tom Honeycatt
Wynnefield Properties, Inc.
P.O. Box 395
Jamestown, North Carolina 27377

336-454-6134

No problems occurred during the consultations.

No additional contacts were made as the organizations included in the consultations represented the typical size and possessed the level of expertise necessary to make sound judgment of RHS program requirements.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

No payment or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

The Agency is not providing any assurance of confidentiality in the regulation. All information solicited as a result of this regulation is subject to existing Agency policies governing the collection and disclosure of information. These procedures are established in Agency regulations published at 7 CFR Part 2015, Subpart E, and 7 CFR Part 2018, Subpart F.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

This regulation does not solicit information on sensitive issues.

12. Provide estimates of the hour burden of the collection of information.

See attached spreadsheet. The estimated annual cost for the public respondents associated with this regulation is \$539,060. The Agency estimated the average salary of \$20.00 per hour based on information from the consultations made in item 8 above.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no start-up costs involved.

14. Provide estimates of annualized cost to the Federal Government.

The estimated annual cost to the Federal Government associated with this regulation is \$50,000. The annualized cost estimates the time spent per year by a specialist, technical, and clerical support in overseeing the regulatory issuance, administration, and printing of forms needed to oversee the regulation by headquarters personnel. The average salary is that of a GS 10 step 1 rounded to the nearest whole dollar. Generally, GS9 and 11 employees process the information. The average grade level used to best approximate this relative even mix is estimated to be at the GS 10 step 1 level.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

There is an increase of 693 hours and it is due to an adjustment. While there was a drop in the number of respondents that needed to submit a collateral pledge, there was an increase in the overall number of responses.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

The Agency does not plan to publish information collected for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

It is not cost effective for the Agency to display the expiration date on the forms due to the large number of field offices and the significant difference in the volume of forms used by these offices.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions requested.

19. How is this information collection related to the Service Center Initiative (SCI)? Will the information collection be part of the one stop shopping concept?

The information solicited is unique and is needed by the Agency to answer a borrower initiated request for a servicing action needed to change existing agreements with the Agency such that the borrower may improve operations. The Agency generally supports the service center initiative efforts of the Federal government. Most Agency offices are co-located with other federal agencies providing similar services to promote the one stop shopping concept to ensure services are efficient, effective, and convenient to the public.