USDA

United States Department of Agriculture

Grain Inspection,
Packers and Stockyards
Administration

Office of the
Deputy Administrator

1400 Independence Ave.
SW, Stop 3601
Washington, D.C. 20250

Voice (202) 720-0219
Fax (202) 205-9237

Hotline 1-800-998-3447

www.gipsa.usda.gov

OCT 09 2015

Dan Harris
President
Livestock Marketing Association
10510 NW Ambassor Drive
Kansas City, MO 64153

Dear Mr. Harris:

This follows up on my November 14, 2014, letter to you regarding guidance you requested on behalf of the Livestock Marketing Association. I sincerely regret that my response did not accurately state the Packers and Stockyards Program's position regarding a livestock market's use of a line of credit in association with its custodial account for shippers' proceeds. I advised that a line of credit could be tied to a custodial account for lawful purposes and that the payments of principal amounts could be paid back to the line of credit from the custodial account. I further advised that interest and fees on the line of credit may not be paid from custodial funds.

The regulations require market agencies to adhere to a very strict schedule to assure that funds are available to pay consignors the net proceeds from the sale of livestock. The market agency is required to deposit the proceeds from the sale, an amount equal to the proceeds receivable from the market agency, any owner, officer, or employee, and any buyer to whom the market has extended credit before the close of the next business day after livestock is sold. Before the close of the seventh day following the sale of livestock, the market is required to deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency. 9 CFR § 201.42(c)

A market can draw on a letter of credit to meet this obligation to fund the custodial account. The difficulty that arises is how the market agency repays the line of credit. My letter contributed to misunderstanding by stating that the market agency could pay back the principal amounts from the custodial account. This statement was incorrect. It is instructive to point out that the funds in the custodial account are trust funds. Section 201.42(d) of the Packers and Stockyards Program regulations specify three permissible purposes for the withdrawal from custodial accounts: 1) payment of the proceeds to the consignor or shipper, or to any person entitled to the payment; 2) to pay lawful charges against the consignment of livestock which the market agency is required to pay; or 3) to obtain any sums due the market agency as compensation for its services.

To clarify the policy of the Packers and Stockyards Program, if, after a proper custodial account reconciliation, the market agency determines that it has more money in the custodial account than is required to pay all outstanding obligations on the account, the market agency can authorize the transfer of funds, not to exceed the amount of the surplus (also known as an excess or overage), to reimburse the lender for the amount of

principal and interest owed on the line of credit. However, to assure that the market is conforming to the best practices to manage the custodial account and to fully comply with regulation 201.42(d), the market is required to transfer the funds to the market's general account and reimburse the line of credit from the general account.
P&SP stresses the importance of requiring that the market maintain control of the custodial account to assure that the funds in the account are, at all times, treated as trust funds held for consignors.

I apologize for the confusion caused by my earlier letter. Should you or anyone else at LMA have questions regarding this clarification, please do not hesitate to contact my office at 202-720-7051.

Sincerely,

Susan B. Keith

Susan B. Keith
Deputy Administrator