

PART 1951 - SERVICING AND COLLECTIONS

Subpart N - Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received-Multiple Family Housing

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PART 1951 - SERVICING AND COLLECTIONS

Subpart N - Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received--Multiple Family Housing

§1951.651 Purpose.

This subpart prescribes the policies and procedures for servicing Multiple Family Housing (MFH) loans and/or grants made by Rural Development when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy granted, any other direct financial assistance, or was not made subject to restrictive-use provisions required by law and/or regulation. As used in this Subpart, MFH loans and grants are Section 515 Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans and Sections 514 and 516 Labor Housing (LH) loans and grants. (Revised 08-20-93, SPECIAL PN.)

§1951.652 Definitions.

As used in this Subpart, the following definitions apply:

- (a) Active borrower. A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.
- (b) Assistance. Financial assistance in the form of a loan, grant, or subsidy received.
- (c) Debt instrument. Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.
- (d) False information. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.
- (e) Inaccurate information. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.
- (f) Inactive borrower. A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

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(g) Recipient. "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized or was not made subject to restrictive-use provisions required by law and/or regulation.
(Revised 08-20-93, SPECIAL PN.)

(h) Unauthorized assistance. Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible. Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect the sum which is determined to be unauthorized from the recipient, regardless of amount, unless any applicable statute of limitations has expired. (Revised 08-20-93, SPECIAL PN.)

§1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

- (a) The recipient was not eligible for the assistance.
- (b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.
- (c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.
- (d) The recipient was granted unauthorized subsidy in the form of:
 - (1) Interest credits (IC) on an RRH loan;
 - (2) Rental Assistance (RA) in connection with an RRH or LH loan; or
 - (3) A subsidy benefit received through use of an incorrect interest rate.

(e) The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided. (Added 08-20-93, SPECIAL PN.)

§1951.655 [Reserved]

§1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by Rural Development personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of Rural Development assistance. If Rural Development has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by Rural Development that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in RD Instruction 2012-B (available in any Rural Development office). If OIG conducts an investigation, the actions outlined in §1951.657 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

- (a) Submission of inaccurate information by the recipient;
- (b) Submission of false information by the recipient;
- (c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;
- (d) Error by Rural Development personnel, either in making computations or failure to follow published regulations or other agency issuances; or
- (e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation.
(Revised 08-20-93, SPECIAL PN.)

§1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to Exhibit A of this Subpart (available in any Rural Development office), and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

- (1) Specify in detail the reason(s) the assistance was determined to be unauthorized;
- (2) State the amount of unauthorized assistance to be repaid according to Exhibit C of this Subpart (available in any Rural Development office); and
- (3) Establish an appointment for the recipient to discuss with the District Director the basis for Rural Development's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter Rural Development's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute Rural Development's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§1951.658 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

§1965.658 (Con.)

(a) Payment in full. If the recipient agrees with Rural Development's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this subpart (available in any Rural Development office). The requirements of Subpart E of Part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows: (Revised 08-20-93, SPECIAL PN.)

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in §1951.668 (a)(1)(i), (a)(3), or (a)(6) of this Subpart, as applicable.

(4) In the case of RA, the repayment will be handled as outlined in §1951.661 (a)(3) and Exhibit E to RD Instruction 1930-C.

(b) Continuation with recipient. If the recipient agrees with Rural Development's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in §1951.668 of this Subpart will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.652 (d) of this Subpart;

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(Added 08-20-93, SPECIAL PN)

(5-2-85) SPECIAL PN

§1951.658 (b) (Con.)

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect Rural Development's financial interests.

(c) Notice of determination when agreement is not reached. If the recipient does not agree with Rural Development's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.657 of this Subpart within 30 days, the District Director will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any Rural Development office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by Rural Development to be unauthorized;

(2) A statement of further actions to be taken by Rural Development as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any Rural Development office).

(d) Appeals. Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with Rural Development's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraphs (a) or (b) of this section.

(e) Liquidation of loan(s) or legal action to enforce collection. If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) Active borrower with a secured loan.

(i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director

and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time, (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than \$1,000; or (Revised 4-9-86, PN 6.)

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under §1951.669 of this Subpart will be made.

(ii) When all of the conditions of paragraphs (a) or (b) or this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according to the provisions of §1951.661 of this Subpart, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by Rural Development without the signature of the recipient according to §1951.668 (a)(5) of this Subpart. In these cases, the recipient will be notified by letter of the actions taken with a copy of Form RD 1951-12, "Correction of Loan Account," if applicable. (Revised 4-9-86, PN 6.)

(2) Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation). The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

§§1951.659 - 1951.660 [Reserved]

§1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in §1951.658 (b) of this Subpart are met, an unauthorized loan or grant will be serviced according to this section and

§1951.668 of this Subpart, provided the recipient has the legal and financial capabilities.

(a) Active borrower/grantee.

(1) Unauthorized loan.

(i) Correction of problem. If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a loan was in excess of the authorized amount, the recipient will be required to refund the difference; where the loan included funds for purchase of excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment; or where a restrictive-use provision was omitted from a loan document, the provision will be inserted. (Revised 08-20-93, SPECIAL PN.)

(ii) Continuation on existing terms. When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) Unauthorized subsidy benefits received through use of incorrect interest rate. When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to Subpart B of Part 1965 of this Chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to §1951.668 of this Subpart. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) Unauthorized interest credits or rental assistance. In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of Exhibit E of Subpart C of Part 1930 of this Chapter.

(i) Tenant's failure to properly report changes in income or size of the household to the borrower. In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form RD 1944-9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) Tenant knowingly misrepresented income or number of occupants to the borrower. If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form RD 1944-9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) Unauthorized RA and/or IC paid due to borrower's error. Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to Rural Development. This restitution will not be charged to any tenant or to the Project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form RD 1944-9. In the case of a nonprofit or public body

§1951.661 (a)(3)(iii) (Con.)

borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) Rental assistance assigned to wrong household. When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be canceled and reassigned.

(A) Notification and cancellation. Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management

agent that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(1) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(2) The RA granted in error will not be recaptured.

(3) The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. The borrower must give the tenant appeal rights under Subpart L or Part 1944 of this Chapter.

(B) Reassignment of RA. Rental assistance will be reassigned in accordance with Paragraph XII of Exhibit E to Subpart C of Part 1930 of this chapter.

(v) Rental assistance in excess of contract. When rental assistance is advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) Unauthorized grant assistance.

(i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form RD 451-2, "Schedule of Remittances," as a "Miscellaneous Collection for Application to the General Fund." For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to §1951.668 (a)(6) of this Subpart.

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

RD Instruction 1951-N
§1951.661 (a)(4) (Con.)

(5) Cases where recipient has both authorized and unauthorized loans outstanding. When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) Inactive borrower. When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the Exhibit A (available in any Rural Development office) letter according to §1951.657 of this Subpart. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

§1951.662 - 1951.667 [Reserved]

§1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) Audit cases. Only the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form RD 1951-12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form RD 1951-52, "MFH Record Adjustment--Audit Claim," according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" as used in this section refers to an account with an active borrower unless specified as "inactive."

(1) Unauthorized loan. When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) Repayment in full. If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form RD 1944-9, in accordance with the FMI. Forms RD 1951-12 and 1951-52 will reflect the amount and the Schedule Number from Form RD 1944-9.

- (ii) Continuation with loan on existing terms. When continuation with the loan on the existing terms is approved according to §1951.661 (a)(1)(ii) of this Subpart, the District Director will submit Form RD 1951-52 to the Finance Office to reflect this.
- (2) Unauthorized subsidy benefits received through use of incorrect interest rate. When the interest rate on an entire loan is changed, Form RD 1951-52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.
- (3) Unauthorized interest credits and/or rental assistance. Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of §1951.661 of this Subpart. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.
- (4) Liquidation pending. When liquidation is initiated under the provisions of this Subpart, Form RD 1951-52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to Subpart G of Part 2033 (available in any Rural Development State or District Office).
- (5) Liquidation not initiated. Cases in which liquidation has not been initiated because of the provisions of §1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) of this Subpart, will be adjusted according to §1951.661 and this section of this Subpart, and the adjustments will be reflected on Form RD 1951-52. In this instance only, account adjustments will be made even though the recipient does not sign Form RD 1951-52 and any related documents.
- (6) Unauthorized grant assistance. When grant funds are to be repaid as provided in §1951.661 (a)(4) of this Subpart, the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding

number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) Establishment of account for inactive borrower. When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Forms Rural Development 1951-12 and 1951-52 will be completed according to the FMIs. The Finance Office will establish the account according to the terms indicated on Form RD 1951-52.

(8) Reporting. At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraphs (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraphs (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) Nonaudit cases. Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form RD 451-26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form RD 1951-13, "Change in Interest Rate," will be completed according to the FMI and executed by the borrower. Form RD 1951-52 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

RD Instruction 1951-N
§1951.668 (b) (Con.)

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to Subpart B of Part 1965 of this Chapter.

(c) Collection of unauthorized assistance. Collection of unauthorized assistance will be made in accordance with the appropriate sections of Subpart K of Part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of Subpart E of Part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release. (Added 08-20-93, SPECIAL PN.)

§1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§1951.670 - 1951.700 [Reserved]

Attachments: Exhibits A, B, and C

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Guide for Initial Letter to Recipients of Unauthorized Assistance

(Recipient's Name and Address)

|For audit cases, show: |
|Re: Audit report number |
|____ and Finding number____|

Dear _____:

The Farmers Home Administration (Rural Development) has determined that you have received unauthorized financial assistance in the form of a (loan, grant, subsidy) amounting to \$_____ which must be repaid.

[Insert a paragraph briefly describing the circumstances under which the unauthorized assistance was extended, including the reason(s) as provided in §1951.657 (a) of this Subpart.]

We have scheduled an appointment at _____ (a.m.; p.m.) or date for you to come into this office to discuss the basis for Rural Development's claim. You may provide facts, figures, written records, or other information you have which might alter Rural Development's determination that the assistance you have received was unauthorized. Necessary servicing actions will also be discussed.

If you are unable to keep this appointment, please telephone this office at (telephone number) to change the appointment. It is urgent that you respond to this request. Failure to do so within 30 days may result in Rural Development initiating appropriate action to effect collection.

Sincerely,

(To be signed by the Servicing Official)

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Guide letter to recipient of unauthorized assistance to state final determination.

|For audit cases, show: |
|Re: Audit Report number|
|___ and Finding number_|

(Recipient's Name and Address)

Dear _____:

After careful consideration of all information available, Rural Development has determined that you have received unauthorized financial assistance as outlined below.

Insert a paragraph to:

- (a) Describe the unauthorized assistance;
- (b) State the amount of the unauthorized assistance which must be repaid (same as the amount stated in the Exhibit A letter unless subsequent information provided by the recipient caused this amount to be changed); and
- (c) State what further action is to be taken by Rural Development. (See §1951.658 (e)(1) or (e)(2) of this Subpart.)

(The following paragraph for individuals only):

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit recipients on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the recipient has the capacity to enter into a binding contract), because all or part of the recipient's income derives from any public assistance program, or because the recipient has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

*See attachment for your appeal rights.

If you do not cooperate in effecting the necessary adjustments to your account, we will have no alternative but to initiate appropriate action to effect collection.

Sincerely,
(To be signed by servicing official)

*Attach Form RD 1900-1 "Request for Appeal of Adverse Action"
(3-16-90) SPECIAL PN

DETERMINATION OF AMOUNT OF UNAUTHORIZED ASSISTANCE

A. When the recipient was at fault, choose the interest rate (from page 2 or 3 of this exhibit) that was in effect when the loan was approved and compute interest on the entire loan at that interest rate from the date the loan was closed to the date the letter to the borrower of unauthorized assistance (Exhibit A of this Instruction) is sent. Add the interest to the beginning principal balance, and subtract from that any payments the borrower has made on the loan. The result is the amount of unauthorized assistance.

B. When the recipient received interest credits to which he or she was not entitled, the amount of unauthorized assistance is considered to be the monthly amount of unauthorized interest credit times the number of months the incorrect agreement has been (or was) in effect, without the addition of interest. This formula will be used both in cases where the recipient was at fault and where the recipient was not at fault.

C. When the recipient was not at fault and:

1. The entire loan was unauthorized, the amount of unauthorized assistance is the outstanding balance (principal and interest) due as of the date of the repayment. The interest rate will be the rate set in the note.

2. The entire loan was made at the wrong interest rate, the amount of unauthorized assistance will be computed as follows:

Outstanding principal balance x (correct rate - note rate) x length of time the loan was outstanding. For example, suppose a borrower received a \$90,000 loan on February 1, 1982, at 11 percent. The loan should have been made at 13 percent. The borrower has made several payments and reduced the outstanding principal balance to \$80,000. The borrower will repay the loan on February 1, 1984. To figure the amount of unauthorized assistance; multiply \$80,000 x 2 percent x 2 years. The 2 percent is the difference between the current rate and the note rate.

INTEREST RATES TO BE CHARGED ON LUMP-SUM REPAYMENTS
WHEN UNAUTHORIZED ASSISTANCE WAS RECEIVED BECAUSE
RECIPIENT WAS AT FAULT

<u>For Fiscal Year (FY)</u>	<u>Interest Rate to Be Charged (%)</u>
1979	8.974
1980	10.734
1981	13.094
1982	14.208
1983	10.880
1984	12.255
1985	11.236
1986	9.015
1987	8.227
1988	8.461
1989	8.990
1990	8.590
1991	7.936
1992	7.042
1993	6.200
1994	5.350
1995	7.797
1996	6.770
1997	7.110
1998	5.980

<u>For Fiscal Year (FY)</u>	<u>Interest Rate to Be Charged (%)</u>
1999	5.81
2000	6.36
2001	5.75
2002	5.62
2003	5.03
2004	*

* The interest rate for FY 2004 will not be available until early FY 2005. If cases of unauthorized assistance received in FY 2004 are being serviced prior to the provision of a rate for FY 2004, use the interest rate for FY 2003 to compute the amount due.

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