

§§ 1951.562–1951.567

7 CFR Ch. XVIII (1–1–05 Edition)

loan, setting up each as a separate loan at the correct interest rate. The correct interest rate will be taken from Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) as of the date of loan approval. All payments made on the loan being corrected will be reversed and reapplied to the unauthorized portion. If after reapplication of payments the unauthorized portion is not paid in full, the options outlined in paragraph (a) of this section may be considered for repayment of the balance of the unauthorized portion; and the authorized portion will be serviced as an outlined loan. See §1951.568 of this subpart for instructions on setting up separate accounts.

(3) *Unauthorized interest subsidy benefits received.* When the borrower was eligible for the loan, but should properly have been charged a higher interest rate than that shown in the debt instrument on all or a portion of the loan, resulting in the receipt of unauthorized interest subsidy benefits, the case will be handled as outlined below. The unauthorized interest rate will be corrected to the interest rate in effect on the date the original loan was approved as outlined in paragraph (a)(3)(iii) of this section.

(i) When a subsidized interest rate was incorrectly charged on the entire loan, all payments made will be reversed and reapplied at the correct interest rate; and future installments will be scheduled at the correct interest rate. After reapplication of payments, the loan will be treated as an authorized loan.

(ii) When a subsidized interest rate was incorrectly charged on only a portion of the loan, the Finance Office will be instructed by the County Supervisor to separate the loan into two portions, with the correct interest rate established for the portion having the incorrect subsidized interest rate. All payments made on the loan being adjusted will be reversed and reapplied, first to the portion with the corrected interest rate. After reapplication of payments at the correct interest rate, both portions will be serviced as authorized loans.

(iii) Incorrect interest rates will be corrected as follows referring to Ex-

hibit C of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) for interest rates in effect on specific dates:

(A) For disaster Emergency (EM) loans, to the rate for EM annual production loans.

(B) For Operating Loans—Limited Resource (OL-LR), to the rate for regular Operating Loans (OL).

(C) For Farm Ownership—Limited Resource (FO-LR), to the rate for regular Farm Ownership (FO).

(D) For all other types of FP loans, to the correct rate for the type loan involved which was in effect when the loan was approved.

(b) *Inactive borrower.* When the individual or entity does not have an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the inactive borrower execute a promissory note in the amount of the assistance determined to be unauthorized according to §1951.557 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 or the term of the original loan, whichever is the shorter term.

(2) Take the best lien obtainable on any collateral having equity value to secure the note.

[50 FR 45777, Nov. 1, 1985, as amended at 51 FR 4138, Feb. 3, 1986; 56 FR 33862, July 24, 1991]

§§ 1951.562–1951.567 [Reserved]

§ 1951.568 Account adjustments and reporting requirements.

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 of 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 cases of unauthorized assistance identified by OIG will be reported to the Finance Office by submission on Form FmHA or its

successor agency under Public Law 103-354 1951-12 completed in accordance with the FMI. 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" refers to an account with an active borrower unless specified as "inactive." If the borrower has arranged to repay in a lump sum, the payment will be remitted with Form FmHA or its successor agency under Public Law 103-354 451-2, according to the FMI. Form FmHA or its successor agency under Public Law 103-354 1951-12 will reflect the amount and the Schedule Number.

(1) *Entire loan unauthorized.* When the entire loan is unauthorized because the borrower was not eligible or because the loan was approved for unauthorized purposes, and continuation is authorized, the Finance Office will be advised as follows:

(i) *Accelerated repayment agreement or loan rescheduled.* If the borrower has executed Form FmHA or its successor agency under Public Law 103-354 1965-11 for loans secured by real estate; or has executed Form FmHA or its successor agency under Public Law 103-354 1951-4 for loans not secured by real estate, the form(s) will be prepared and distributed according to the FMIs, attaching the original form(s) to Form FmHA or its successor agency under Public Law 103-354 1951-12.

(ii) *Continuation with loan on existing terms.* When it is determined that all the conditions outlined in §1951.558(b) of this subpart are met and continuation with the loan on the existing terms is approved, the servicing official will submit Form FmHA or its successor agency under Public Law 103-354 1951-12 to the Finance Office to reflect this.

(2) *Portion of loan unauthorized.* When a loan is to be separated into authorized and unauthorized portions, the authorized portion will retain the original loan number, and the original principal amount will be reduced by the unauthorized amount. A new loan in the unauthorized amount will be established as the unauthorized loan with the next available number assigned by the Finance Office. Payments made on the loan being adjusted will be reversed

and reapplied first to the unauthorized loan. If the reapplication of payments does not pay the unauthorized loan in full, upon receipt of Forms FmHA or its successor agency under Public Law 103-354 451-26, "Transaction Record," showing the balances of the authorized and unauthorized loans, the servicing official will proceed under the provisions of §1951.561(a)(2) and will submit a revised Form FmHA or its successor agency under Public Law 103-354 1951-12 (along with a copy of the original Form FmHA or its successor agency under Public Law 103-354 1951-12).

(3) *Unauthorized subsidy benefits received—(i) Entire loan.* When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103-354 1951-12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the original 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 then be treated as an authorized loan.

(ii) *Portion of loan.* When the interest rate on only a portion of a loan must be changed, the portion which has the incorrect interest rate will be established as a new loan at the correct interest rate shown on Form FmHA or its successor agency under Public Law 103-354 1951-12. Payments made on the loan being adjusted will be reversed and reapplied first to the loan with the corrected interest rate. Both loans will then be treated as authorized loans.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103-354 1951-12 will be submitted to advise the Finance Office to establish the unauthorized assistance account. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of §1951.558 (c)(1)(iv)(A) or (c)(1)(iv)(B) of this subpart, will be adjusted according to §1951.561 (a)(2) or (a)(3) of this subpart and this section, and the adjustments will be reflected

on Form FmHA or its successor agency under Public Law 103-354 1951-12. In this instance *only*, account adjustments will be made even though the borrower does not sign Form FmHA or its successor agency under Public Law 103-354 1951-12 and any related documents.

(6) *Establishment of account of inactive borrower.* (i) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Form FmHA or its successor agency under Public Law 103-354 1951-12 will reflect this, and the Finance Office will establish or the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103-354 1951-12.

(ii) When a judgment is obtained against such a borrower, Form FmHA or its successor agency under Public Law 103-354 1962-20, "Notice of Judgment," will be prepared and distributed in accordance with the FMI to establish a judgment account. The FmHA or its successor agency under Public Law 103-354 field office will process the judgment or the third party judgment via the FmHA or its successor agency under Public Law 103-354 field office terminal system.

(7) *Payments on authorized and unauthorized loans concurrently.* When a borrower has both authorized and unauthorized loans outstanding, installments may be scheduled to be paid concurrently on all loans. Payments may be adjusted by means of rescheduling or reamortizing to coincide with the borrower's repayment ability according to servicing regulations for the type loan involved. The County Supervisor will complete Form FmHA or its successor agency under Public Law 103-354 451-2 so that payments received will be applied first to the unauthorized loan account to maintain it current, with the remainder of the payment applied to the other loan(s).

(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. For reporting purposes, the following applies:

(i) For an unauthorized loan account established as provided in paragraph (a) (1), (2), or (6) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, it will be reported on the next scheduled report *only*, giving the amount collected.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the unpaid balance will be reported initially and the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing terms is approved, or after a loan is rescheduled or reamortized, it will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(3) of this section, when 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, it will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(b) *Nonaudit cases.* Basically, servicing options which may be used are the same for audit and nonaudit cases; 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 account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Each payment reversed will be re-applied as of the original date of credit.

After payments are reversed and re-applied, the servicing official will receive Forms FmHA or its successor agency under Public Law 103-354 451-26 from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate is necessary, retroactive to the date of loan closing on all or a portion of a loan, Form FmHA or its successor agency under Public Law 103-354 1951-13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and re-applied accordingly.

(ii) For accounts to be rescheduled or reamortized, Forms FmHA or its successor agency under Public Law 103-354 1951-4, or 1965-11, as applicable, will be prepared and submitted in accordance with the respective FMI.

(iii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the County Supervisor 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.

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

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to the applicable servicing regulations for the type loan involved.

[50 FR 45777, Nov. 1, 1985, as amended at 55 FR 35295, Aug. 29, 1990]

§ 1951.569 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely effect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the ap-

propriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.570-1951.599 [Reserved]

§ 1951.600 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0102.

Subpart M [Reserved]

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

SOURCE: 50 FR 12996, Apr. 2, 1985, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, subpart N (§§ 1951.651 through 1951.700) was removed and reserved, effective Feb. 24, 2005.

§ 1951.651 Purpose.

This subpart prescribes the policies and procedures for servicing multiple family housing (MFH) loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) 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.

[58 FR 38926, July 21, 1993]