

## § 1951.652

### § 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.

(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.

(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.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

## 7 CFR Ch. XVIII (1-1-05 Edition)

### § 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.

[58 FR 38926, July 21, 1993]

### § 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.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

### § 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 FmHA or its successor agency under Public Law 103-354 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 FmHA or its

successor agency under Public Law 103-354 assistance. If FmHA or its successor agency under Public Law 103-354 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 FmHA or its successor agency under Public Law 103-354 that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in FmHA or its successor agency under Public Law 103-354 Instruction 2012-B (available in any FmHA or its successor agency under Public Law 103-354 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 FmHA or its successor agency under Public Law 103-354 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.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

**§ 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 FmHA or its successor agency under Public Law 103-354 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 FmHA or its successor agency under Public Law 103-354 office); and
- (3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA or its successor agency under Public Law 103-354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103-354'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 FmHA or its successor agency under Public Law 103-354'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.