

## § 1951.707

party acting on the recipient's behalf including professional consultant such as engineers, architects, and attorneys, when the recipient did not know the other part 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.

### § 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official 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 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, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official 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 servicing official, the servicing official 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.

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When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

### § 1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103-354's determination or will pay the amount in question, the servicing official 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 determined according to § 1951.711(a). the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittances," as follows:

(1) In the case of a 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 servicing official will report the repayment as outlined in § 1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103-354'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 § 1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.702(d);

(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 FmHA or its successor agency under Public Law 103-354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103-354's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.707 within 30 days, the servicing official will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 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 FmHA or its successor agency under Public Law 103-354 to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103-354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 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 servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who 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 FmHA or its successor agency under Public

Law 103-354's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraph (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan.*

(i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required. 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 applicable provisions of subpart A of part 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

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under §951.716 will be made.

(ii) When all of the conditions of paragraph (a) or (b) of 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 §1951.711, 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 paragraph (e)(1)(i)(A) or

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(e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. 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. The State Director will tell OGC what assets, if any, are available from which to collect.

**§§ 1951.709–1951.710 [Reserved]**

**§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.**

When the conditions outlined in §1951.708(b) are met, the servicing options outlined in this section will be considered. Accounts will be serviced according to this section and §1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount—*(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective Community and Business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligation, and the best security position practicable in a manner which will adequately protect the FmHA or its successor agency under Public Law 103-354's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA or its successor agency under Public Law 103-354 451-2 to the Finance Office as "Miscellaneous Collections for Application to the General Fund." For cases identified in OIG audits only, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund