

§ 1951.709

7 CFR Ch. XVIII (1-1-08 Edition)

(4) States the amount is immediately due and payable to Rural Development;

(5) Describes the rights the recipient has for seeking review of Rural Development's determination pursuant to 7 CFR part 11;

(6) Describes the Agency's available remedies regarding enforced collection, including referral of debt delinquent more than 180 days for Federal salary, benefit, and tax offset under the Department of Treasury Offset Program (TOP); and

(7) Provides an opportunity for the recipient to meet with Rural Development to provide facts, figures, written records, or other information which might refute Rural Development's determination.

(b) If the recipient meets with Rural Development, Rural Development 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, Rural Development may grant additional time for the recipient to assemble documentation. Such extension of time for payment will be valid only if Rural Development documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the demand letter during any extension period unless the terms of the demand letter are modified in writing by Rural Development.

(c) Unless Rural Development modifies the original demand, it will remain in full force and effect.

§ 1951.709 Decision on servicing actions.

(a) *Payment in full.* If the recipient agrees with Rural Development's determination or will pay the amount in question, Rural Development 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 § 1951.707.

(b) *Continuation with recipient.* If the recipient agrees with Rural Develop-

ment'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 may be taken provided all of the following conditions are met:

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

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

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

(c) *Appeals.* Appeals resulting from the letter prescribed in § 1951.708 will be handled according to 7 CFR Part 11. All appeal provisions will be concluded before proceeding with further actions.

(d) *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 or more of the following actions will be taken:

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

(i) Rural Development will attempt to have the recipient liquidate voluntarily. 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 would not be in the best financial interest of the Government to force liquidation.

(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,

forced liquidation action will be initiated as provided in paragraph (d)(1)(i) of this section.

(iii) When forced liquidation would be initiated, except that the loan is being handled in accordance with paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, continuation with the loan on existing terms may be provided.

(iv) If the debt is not otherwise resolved, Rural Development will take appropriate debt collection actions in accordance with 7 CFR Part 3, subparts B and C, and the Federal Claims Collection Standards at 31 CFR Chapter IX, Parts 900-904.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* Rural Development may pursue all reasonable legal remedies.

§ 1951.710 [Reserved]

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

When the conditions outlined in §1951.709(b) are met, the servicing options outlined in this section will be considered.

(a) *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.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to §1951.707(a) will remain accelerated per the demand letter sent in accordance with §1951.708 unless modified terms are timely reached with the recipient and accrued 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 per a repayment schedule satisfactory to Rural Development, but in no event may the revised repayment schedule exceed a period of 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 §1951.707(b) will be converted to an account receivable, with interest

payable at the market interest rate for the respective Community Facilities or Business and Industry Program area in effect on the date the financial assistance was provided. In all cases, the receivable will be amortized per a repayment schedule satisfactory to Rural Development, but in no event may the amortization period exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this receivable, and the best security position available to adequately protect Rural Development's interest during the repayment period will be taken as security.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as follows:

(i) The recipient will be given the option to submit a written request that the interest rate be corrected to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing.

(ii) Any accrued unauthorized subsidy will be handled in accordance with §1951.709.

(b) *Continuation on existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraph (a)(1), (a)(2), or (a)(3) of this section, the recipient may be allowed to continue to meet the loan obligations outlined in the existing loan instruments. Rural Development will not continue with unauthorized grants on existing terms.

§§ 1951.712-1951.716 [Reserved]

§ 1951.717 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, the Administrator determines that the application of the requirement or provision would adversely affect the Government's interest.