

PART 1951 - SERVICING AND COLLECTIONS

Subpart O - Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received--Community and Insured Business Programs

TABLE OF CONTENTS

<u>Sec.</u>		<u>Page</u>
1951.701	Purpose.	1
1951.702	Definitions.	1
1951.703	Policy.	2
1951.704	- 1951.705 [Reserved]	2
1951.706	Initial determination that unauthorized assistance was received.	2
1951.707	Determination of the amount of unauthorized assistance.	4
	(a) Unauthorized loan amount.	4
	(b) Unauthorized grant amount.	4
1951.708	Notification to recipient.	4
1951.709	Decision on servicing actions.	6
	(a) Payment in full.	6
	(b) Continuation with recipient.	7
	(c) Appeals.	7
	(d) Liquidation of loan(s) or legal action to enforce collection.	7
1951.710	[Reserved]	9
1951.711	Servicing options in lieu of liquidation or legal action to collect.	9
	(a) Continuation on modified terms.	10
	(b) Continuation on existing terms.	11
1951.712	- 1951.714 [Reserved]	11

<u>Sec.</u>	<u>Page</u>
1951.715 <i>Account adjustments.</i>	11
(a) <i>Entire loan unauthorized.</i>	12
(b) <i>Portion of loan unauthorized.</i>	12
(c) <i>Unauthorized subsidy benefits received.</i>	13
(d) <i>Liquidation pending.</i>	13
(e) <i>Liquidation not initiated.</i>	13
(f) <i>Unauthorized grant assistance.</i>	13
(g) <i>Delinquent accounts.</i>	14
1951.716 <i>Reporting requirements to National Office.</i>	14
1951.717 <i>Exception Authority.</i>	14
1951.718 - 1951.750 [Reserved]	14
Attachments: Exhibits A and B	

PART 1951 - SERVICING AND COLLECTIONS

Subpart 0 - Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received--Community and Insured Business Programs

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program 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, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by Rural Development to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title. (Revised 10-29-07, SPECIAL PN.)

§ 1951.702 Definitions.

As used in this subpart, the following definitions apply:

Active borrower. A borrower who has an outstanding account in the records of the office of the Deputy Chief Financial Officer (DCFO), 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.

Assistance. Financial assistance in the form of a loan, grant, or subsidy received.

Debt instrument. Used as a collective term to include promissory note, assumption agreement, grant agreement, or bond.

False information. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

DISTRIBUTION: WSAL

Account Servicing
Servicing and Collections

Inaccurate information. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

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 DCFO.

Recipient. "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, a grant, or a portion of a grant which was unauthorized.

Rural Development. A mission area within the U.S. Department of Agriculture consisting of the Office of the Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

Servicing official. *For Community Programs, the servicing official is the Rural Development Manager, the Assistant Rural Development Manager, or the Rural Development Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.*

Unauthorized assistance. Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization or for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed 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.

§ 1951.703 Policy.

When unauthorized assistance has been received, an expeditious effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount.

§ 1951.704 - 1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the USDA Office of the Inspector General (OIG); through reviews made by Rural Development personnel; or through other means such as information provided by a private citizen who documents that unauthorized assistance has been received by a recipient of Rural Development assistance.

§ 1951.706 (Con.)

If the servicing official has reason to believe unauthorized assistance as received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment.

In every case where it is known or believed by Rural Development that the assistance was based on false information, investigation by the OIG will be requested. (See RD Instruction 2012-A in the case of audits and Instruction 2012-B in the case of investigations.)

If OIG conducts an audit or investigation, the notification actions outlined in

§ 1951.708 will be deferred until the OIG investigation is completed and the report is received by the Agency.

For each recommendation identified in an OIG audit report that is associated with the recovery of a monetary amount, the demand letter as prescribed in § 1951.708 of this subpart must be sent to the recipient within 30 days of the date of the audit report. A copy of the demand letter(s) will be needed to be received by OIG in order to meet the requirements of Appendix A of DR 1720-1 and to reach a management decision on a course of action. In essence, the final OIG report is issued, and within 30 days the demand letter must be sent to the recipient, OIG and DCFO. This allows DCFO 30 days to process the demand letter and establish an account receivable on the Agency's accounting records. This process will allow for reaching a management decision within 60 days of report issuance as contemplated in Departmental Regulations.

In all cases, 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:

- (1) Submission of inaccurate information by the recipient;*
- (2) Submission of false information by the recipient;*
- (3) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professional consultants such as engineers, architects, and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;*

(4) Error by Rural Development personnel, either in making computations or failure to follow published regulations or other Agency issuances; or

(5) 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 Determination of the amount of unauthorized assistance.

(a) Unauthorized loan amount. The unauthorized loan amount will be the unauthorized principal plus any interest accruing on the unauthorized principal at the note interest rate until the date paid unless otherwise agreed to in writing by Rural Development.

(b) Unauthorized grant amount. The unauthorized grant amount is the amount actually expended under the grant agreement plus interest accrued beginning on the date of the demand letter at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid unless otherwise agreed in writing by Rural Development.

Interest would ordinarily accrue beginning on the date of the demand letter unless the demand letter specifies another date for the onset of interest accrual. For example, the demand letter may state the recipient may avoid accrued charges if the stated demand amount is received by Rural Development by a specified date. Accrual of amounts owed are unaffected by the suspension of the obligation to pay in the event of an extension pursuant to § 1951.708(b).

§ 1951.708 Notification to recipient.

(a) Upon determination that unauthorized assistance was received, Rural Development will send a demand letter to the recipient that:

(1) specifies the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(2) states the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;

§ 1951.708(a) (Con.)

(3) provides detailed reason(s) why the assistance was determined to be unauthorized;

(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 and to provide to Rural Development 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 initial 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.

Copies of all correspondence between Rural Development and the recipient pursuant to this section must be relayed to the DCFO, and the Direct Loan and Grant Branch (DLGB), Mail Stop FC 340.

The demand letter substantially similar to Exhibit A must be sent at the earliest practicable time (sent by Certified Mail, Return Receipt Requested). Note that § 1951.706(d) indicates that the timing of this letter should coincide with the issuance of the OIG report to the Agency in cases where OIG is conducting an investigation. In all other cases, the Agency should send this demand letter when it makes its initial determination, 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 Financial Management Division of the National Office. In cases where unauthorized grant assistance was identified, a copy of the letter will also be sent to the DCFO, DLGB, Mail Stop FC 340.

When a recipient is granted additional time to provide information to refute Rural Development's findings, the servicing official must document support in the file for the decision to grant an extension for time to respond. Accruals are independent of and not affected by the suspension of the payment obligation created by the demand letter. Interest will continue to accrue during the extension period.

Where the unauthorized assistance is not a direct loan, an account receivable should be established at the time the demand letter is sent, the terms of which correspond to the terms of the demand letter.

§ 1951.709 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. Determinations pursuant to §§ 1951.709(b) and 1951.711(b) may only be made by the Administrator.

The Agency must timely pursue liquidation or other legal action in the absence of Administrator-approved alternatives.

(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.*

The servicing official will remit collections according to the Forms Manual Insert (FMI) for Form RD 451-2, "Schedule of Remittances," with a copy of the notification letter as prescribed in Exhibit A. Note that accruals continue to run until the payoff date.

§ 1951.709 (Con.)

(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 § 1951.711 will be taken provided all of the following conditions are met:

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

The servicing official must document support in the file for the determination that the required conditions for continuing with the recipient have been met. Until and unless repayment terms pursuant to a continuation arrangement have been agreed to in writing by the Agency and the recipient, or are otherwise precluded by appeal proceedings, the Agency may not cease efforts to pursue liquidation and collection.

Note that determinations under this paragraph may only be made by the Administrator, including what constitutes a reasonable repayment period, per § 1951.709 above.

(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.

In the event the recipient does not pursue an appeal within prescribed time frames, withdraws its appeal, or is not successful in its appeal, the servicing official will document the case file accordingly and proceed to service the case in accordance with the applicable sections of this regulation.

(d) Liquidation of loan(s) or legal action to enforce collection. When a case cannot be handled according to the provisions of paragraphs (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 of this subpart, one 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. *If the servicing official wishes to make an exception to forced liquidation on this basis, a request for an exception in accordance with § 1951.717 of this subpart may be made.*

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.

(ii) When all of the conditions of paragraphs (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. *(In these cases, the recipient will be notified by letter of the actions taken.)*

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

§ 1951.709 (d)(2) (Cont.)

No additional notice to the recipient of a transfer to U.S. Treasury for TOPS or cross servicing is required, however, this transfer should not be made earlier than 60 days after the date of the demand letter.

(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. 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, the recommendation of the 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.

The account receivable that is established pursuant to § 1951.708 is a claim for purposes of the Debt Collection Improvement Act and is subject to transfer to U.S. Treasury for collection when it is 180 days past due. It is USDA policy to send out a 60 day notice letter advising the recipient that the claim will be transferred, but the 60 day notice letter is not legally required if the initial demand letter is in the form of Exhibit A to these instructions. It is the practice of the St. Louis office to consult with the state office on the timing of this 60 day notice; the system is not programmed to automatically send this letter out for these account receivables.

§ 1951.710 [Reserved]

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

When the conditions outlined in § 1951.709(a) or (b) of this subpart are met, the servicing options outlined in this section will be considered. Accounts will be serviced according to this section. (See § 1951.715 as well.)

In the event the receivable is fully paid, a letter acknowledging that the demand letter has been satisfied may be sent by Rural Development to the recipient.

(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.

In each instance, the servicing official will advise the DCFO by memorandum of the actions necessary to effect the account adjustment in accordance with § 1951.715 below.

(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 accrue 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 a loan at the market interest rate for the respective Community and Business 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 practicable in a manner which will adequately protect Rural Development's interest during the repayment period will be taken as security.

For rural business program grants, the interest rate charged on the receivable will be fixed at the 26-week Treasury Bill rate in effect as of the date the recipient was originally notified of the unauthorized assistance as provided in § 1951.708. For community facilities program grants, the interest rate will be the market rate in effect for community facilities program loans as of the date the recipient was originally notified of the unauthorized assistance as outlined in § 1951.708.

(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:

§ 1951.711 (a)(3) (Con.)

- (i) the recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing (See Exhibit B for interest rates); and
- (ii) any accrued unauthorized subsidy will be handled in accordance with § 1951.709.

Rural Development servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the OGC in each case for advice in accomplishing corrective actions.

(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.

For cases of unauthorized grants, where the final determination is made that liquidation or legal action to enforce collection will not be pursued, or servicing options will not be pursued, the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum, of this determination. The DCFO will use this notification to remove the accounts receivable from the financial records that was established by the original letter of notification submitted in accordance with § 1951.708 of this subpart.

Note that determinations under this paragraph may only be made by the Administrator according to § 1951.709.

§§ 1951.712 - 1951.716 [Reserved]

§ 1951.715 Account adjustments.

Cases of unauthorized assistance which require DCFO notification and action will be submitted to the DCFO, DLGB, Mail Stop FC 340, by memorandum from the servicing official, as provided in § 1951.711.

(a) Entire loan unauthorized. When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum, which of the following servicing actions will be taken. Each memorandum should include account (borrower) name, case number, fund code, loan number, and an explanation of the actions to be taken.

(1) Repayment in full. If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form RD 451-2, in accordance with § 1951.709 (a). The schedule number assigned to Form RD 451-2 will be included in the memorandum.

(2) Continuation with loan on existing or modified terms. When it is determined, according to § 1951.711(a)(1) or (b), that continuation with the loan or account receivable on existing or modified terms will be provided, the servicing official will advise the DCFO by memorandum of this determination and, if applicable, include an explanation of the modified terms.

(b) Portion of loan unauthorized. When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum which of the following actions will be taken. Each memorandum should include account (borrower) name, case number, fund code, loan number, and an explanation of the actions to be taken.

(1) Repayment in full of unauthorized portion. If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form RD 451-2 in accordance with § 1951.709(a). The schedule number assigned to Form RD 451-2 will be included in the memorandum.

(2) Continuation with unauthorized portion of loan on existing or modified terms. When it is determined, according to § 1951.711 (a) (1) or (b), that continuation with the unauthorized portion of the loan on existing or modified terms will be provided, the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum of this determination, and, if applicable, include an explanation of the modified terms. The authorized portion will retain the original loan number with installments adjusted

§ 1951.715(b)(2) (Con.)

accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently. Failure to timely pay on one loan shall constitute a cross default for purposes of the other loan.

(c) Unauthorized subsidy benefits received. The unauthorized subsidy benefits received will be serviced according to § 1951.711(a)(3) or (b).

(d) Liquidation pending. When liquidation is initiated under the provisions of this subpart, the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(e) Liquidation not initiated. Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.709(d)(1), will be serviced in accordance with § 1951.709(d)(1)(iii).

(f) Unauthorized grant assistance. A grant that is to be repaid will be serviced as follows:

(1) Rural business program grants. When it is determined that a rural business program grant is to be repaid according to § 1951.711(a)(2), the servicing official will advise the DCFO, DLGB, Mail Stop, FC 340, by memorandum. The memorandum should include the account (borrower) name, address, phone number, address of the location of any security property (if applicable), tax ID/social security number, amount of receivable, effective date, interest rate, term of repayment to include repayment period, name and phone number of the servicing official, a copy of the original grant agreement and/or a copy of the debt instrument, and a copy of the OIG audit report of investigation, if applicable.

The DCFO will establish a receivable based on the repayment terms. The servicing official will collect all payments from the recipient and remit the payments to the Wholesale Lockbox in accordance with the FMI for Form RD 451-2, and subpart B of part 1951. If provided for in the debt instrument, recipients that do not make their payments by the installment due date may be assessed late fees in the amount of 4 percent of the payment due. However, interest will not accrue on late fees.

(2) *Community facilities program grants.* When it is determined that a community facilities program grant is to be repaid according to § 1951.711(a)(2), the servicing official will advise the DCFO, DLGB, Mail Stop FC 340, by memorandum. Each memorandum should include account (recipient's) name, case number, amount of receivable, effective date, interest rate, term of repayment to include repayment period, a copy of the original grant agreement and/or a copy of the debt instrument. The DCFO will establish a receivable based on the repayment terms. The servicing official will collect all payments from the recipient and remit the payments to the Wholesale Lockbox in accordance with the FMI for Form RD 451-2, and subpart B of part 1951.

(g) *Delinquent accounts.* The organization maintaining the receivable will report delinquent receivables to the applicable servicing official for collection efforts. Delinquent receivables will be subject to referral under the TOP or Cross Servicing, as applicable, in accordance with subpart C of part 1951.

§ 1951.716 Reporting requirements to National Office.

An annual report will be submitted by the State Office to the Deputy Administrators for each of the respective program areas within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

§ 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 application of the requirement or provision would adversely affect the Government's interest.

§ 1951.717 (Con.)

Requests for exceptions must be made in writing by the State Director and submitted through the Deputy Administrator for Community Programs or Deputy Administrator for Business Programs, as applicable. Requests will be 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.

§§ 1951.718 - 1951.750 [Reserved]

Attachments: Exhibits A and B

oOo

[Purpose: This letter will be sent to demand repayment of unauthorized assistance from individual and entity debtors/grantees. Do not send this letter if the recipient has filed for protection under the Bankruptcy Code.]

Guide Letter to Recipients of Unauthorized Assistance

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

(Recipient's Name and Address)

Dear _____,

Rural Development has determined that you received unauthorized financial assistance in the form of a (loan, grant, subsidy) in the amount of \$_____.

[Insert a paragraph briefly describing the circumstances under which the unauthorized assistance was extended, including any detailed reasons why the assistance was determined to be unauthorized. Include references to applicable regulations.]

Accordingly, the unauthorized assistance amount above is immediately due and payable to [Name of Agency]. Please submit your check or money order payable to [Name of Agency] to our office at the following address for payment in full:

[Insert address where payment should be sent]

The unauthorized assistance amount will accrue interest from the date of this notice at the [note interest rate/interest rate stipulated in the grant agreement for default/interest rate agreed to in writing by Rural Development] rate of ___% until your date of payment. *[note to agency: If none of these apply, the default rate is that established by Treasury annually in accordance with 31 U.S.C. 3717 and 31 CFR 901.9]* This standard for accruing interest is established by Rural Development regulation, 7 CFR 1951.707.

Beginning on the date of this notice, Rural Development will also assess administrative costs incurred for processing and handling the debt based on the actual cost to the agency in accordance with 31 CFR, section 901.9.

Interest and administrative costs will be waived on any portion of the debt paid within 30 days from the date of this notice.

If the debt is delinquent for more than 90 days, Rural Development will charge a penalty of ___% per year on the amount due in accordance with 31 CFR section 901.9. *[note: the penalty fee may not exceed 6% and must be the same for all cases unless some distinction is established by regulation.]* The charge will accrue from the date of this notice.

Debt Collection Actions

If this debt is not resolved through payment or use of Debtor's Rights (listed below), Rural Development will begin collection actions. Rural Development will notify USDA agencies to collect the debt by administrative offset. Rural Development also must transfer debts delinquent for more than 180 days to the U.S. Department of Treasury (Treasury) for collection. Treasury will collect the debt by centralized administrative offset from the following Federal Government sources:

- (1) Treasury Offset Program (TOP) (To obtain income tax refunds; contract or vendor payments; certain Federal benefit payments such as Social Security (other than Supplement Security Income), Railroad Retirement (other than tier 2), and Black Lung (part B) benefits; and other Federal payments including certain loans to you that are not exempt from offset.)
- (2) Federal salary pay, including military pay (through Treasury's centralized computer matching program, not to exceed 15 percent of disposable pay.)
- (3) Federal retirement and disability fund, including military retirement pay (from the Office of Personnel Management, in most cases not to exceed 50 percent of the net annuity.)

Rural Development intends to enforce collection by referring the debt to the Department of Justice to initiate litigation if you fail to pay or otherwise resolve the debt.

Debtor's Rights

- (1) Meeting. We have scheduled an appointment at _____[AM/PM] on ___[insert date - SUGGESTED: within 15 calendar days of notice] for you to come into this office [specify address if different from where payment should be sent] to discuss the basis for Rural Development's claim. You may provide facts, figures, written records, or other information you have that might alter Rural Development's determination that the assistance you have received was unauthorized. Necessary servicing actions also will be discussed. If you are unable to keep

this appointment, please telephone this office at [insert telephone number] to change the appointment.

- (2) File review. You may inspect and copy your Agency file regarding this debt. If you wish to review your Agency file, you must notify the Rural Development office below in writing within 20 calendar days from your receipt of this notice. In response, Rural Development will notify you regarding a time and place for your review. If you desire copies of any documents, one copy will be provided at our expense.
- (3) Repayment agreement. At any time within 20 calendar days of your receipt of this notice, you may present a written agreement to repay the debt as an alternative to administrative offset. Your proposed repayment agreement must document your ability to pay the amount due within a short period of time.
- (4) Appeal. You may appeal this determination directly to the National Appeals Division (NAD), United States Department of Agriculture (USDA), pursuant to regulations published at 7 C.F.R. part 11 (copy attached). If you wish to appeal this decision, your written request for appeal must be postmarked no later than 30 calendar days from the date you received this notice. Send the request for appeal to the office of the Area Supervisor, NAD, [insert NAD address]. Your request for appeal must include a copy of this letter and a statement explaining why you think the notice is incorrect. A copy should be sent to this office. NAD will advise you of the time and place of any hearing and any procedural requirements. When you request appeal, there will be an immediate stay of administrative offset until a final NAD decision is issued.

Please do not delay in paying the amount due or exercising the debtor's rights offered in this notice. No additional advance notice will be sent before referral of the debt to Treasury for collection. You should advise your local RD office if you or another person liable for this debt files bankruptcy.

[for individual recipients only]

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

RD Instruction 1951-0
Exhibit A
Page 4

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; or because all or part of your income derives from any public assistance program; or because you filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice. If you believe you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410.

Sincerely,

[to be signed by the servicing official]

Rural Development
United States Department of
Agriculture

Attachment

[Attach a copy of 7 CFR part 11]

oOo

Effective Dates and Interest Rates
 Community and Business Programs

COMMUNITY PROGRAMS

Rate in effect on January 1, 1977, and through September 30, 1981, was 5.00 percent.

<u>Effective Date</u>	<u>Poverty Line Rate (%)</u>	<u>Intermediate Rate (%)</u>	<u>Market Rate (%)</u>
October 1, 1981	5.0	-----	12.250
January 1, 1982	5.0	-----	11.375
April 1, 1982	5.0	-----	12.375
July 1, 1982	5.0	-----	11.625
July 9, 1982	5.0	8.375	11.625
October 1, 1982	5.0	7.875	10.625
January 1, 1983	5.0	7.375	9.750
April 1, 1983	5.0	7.125	9.125
October 1, 1983	5.0	7.250	9.500
April 1, 1984	5.0	7.250	9.625
July 1, 1984	5.0	7.750	10.500
October 1, 1984	5.0	7.500	10.000
April 1, 1985	5.0	7.250	9.500
July 1, 1985	5.0	6.750	8.625
October 1, 1985	5.0	7.000	9.000
January 1, 1986	5.0	6.625	8.375
April 1, 1986	5.0	6.125	7.125
July 1, 1986	5.0	6.375	7.625
October 1, 1986	5.0	6.000	6.875
January 1, 1987	5.0	5.875	6.625
April 1, 1987	5.0	5.750	6.500
July 1, 1987	5.0	6.500	7.875
January 1, 1988	5.0	6.375	7.750
April 1, 1988	5.0	6.125	7.375
July 1, 1988	5.0	6.375	7.750
January 1, 1989	5.0	6.250	7.500
April 1, 1989	5.0	6.250	7.375
July 1, 1989	5.0	6.000	7.125
October 1, 1989	5.0	6.000	7.000
April 1, 1990	5.0	6.000	7.125
October 1, 1990	5.0	6.125	7.250
January 1, 1991	5.0	6.000	7.000
April 1, 1991	5.0	5.875	6.750
July 1, 1991	5.0	5.875	6.875
October 1, 1991	5.0	5.875	6.750

Effective Dates and Interest Rates
 Community and Business Programs

COMMUNITY PROGRAMS (CON.)

<u>Effective Date</u>	<u>Poverty Line Rate (%)</u>	<u>Intermediate Rate (%)</u>	<u>Market Rate (%)</u>
January 1, 1992	5.0	5.750	6.625
July 1, 1992	5.0	5.625	6.375
October 1, 1992	5.0	5.500	6.125
January 1, 1993	5.0	5.625	6.250
April 1, 1993	5.0	5.250	5.625
October 1, 1993	5.0	5.125	5.250
January 1, 1994	5.0	5.125	5.375
April 1, 1994	4.5	5.000	5.500
July 1, 1994	4.5	5.250	6.125
January 1, 1995	4.5	5.625	6.875
April 1, 1995	4.5	5.250	6.000
July 1, 1995	4.5	5.125	5.750
October 1, 1995	4.5	5.250	6.000
January 1, 1996	4.5	5.000	5.500
April 1, 1996	4.5	4.875	5.375
July 1, 1996	4.5	5.125	5.875
October 1, 1996	4.5	5.125	5.750
January 1, 1997	4.5	5.000	5.500
October 1, 1997	4.5	4.875	5.375
January 1, 1998	4.5	4.875	5.250
April 1, 1998	4.5	4.750	5.125
October 1, 1998	4.5	4.750	5.000
July 1, 1999	4.5	4.750	5.125
October 1, 1999	4.5	5.000	5.500
January 1, 2000	4.5	5.125	5.750
April 1, 2000	4.5	5.125	5.875
October 1, 2000	4.5	5.000	5.500
April 1, 2001	4.5	4.750	5.125
July 1, 2001	4.5	4.875	5.250
October 1, 2001	4.5	4.750	5.000
January 1, 2002	4.5	4.750	5.125
April 1, 2002	4.5	4.750	5.000
July 1, 2002	4.5	4.750	5.125
October 1, 2002	4.5	4.625	4.875
April 1, 2003	4.5	4.625	4.750
July 1, 2003	4.5	4.375	4.250
October 1, 2003	4.5	4.750	5.000
January 1, 2004	4.5	4.500	4.625
April 1, 2004	4.5	4.375	4.375

Effective Dates and Interest Rates
 Community and Business Programs

COMMUNITY PROGRAMS (CON.)

<u>Effective Date</u>	<u>Poverty Line Rate (%)</u>	<u>Intermediate Rate (%)</u>	<u>Market Rate (%)</u>
April 1, 2004	4.5	4.375	4.375
July 1, 2004	4.5	4.750	5.000
October 1, 2004	4.5	4.500	4.625
January 1, 2005	4.5	4.500	4.500
April 1, 2005	4.5	4.375	4.250
July 1, 2005	4.5	4.250	4.125
October 1, 2005	4.5	4.375	4.250
January 1, 2006	4.5	4.500	4.500
April 1, 2006	4.5	4.375	4.375
July 1, 2006	4.5	4.500	4.500
October 1, 2006	4.5	4.375	4.375
January 1, 2007	4.5	4.250	4.125
July 1, 2007	4.5	4.375	4.250
October 1, 2007	4.5	4.500	4.500
January 1, 2008	4.5	4.375	4.375
April 1, 2008	4.5	4.625	4.750
July 1, 2008	4.5	4.500	4.500
January 1, 2009	4.5	4.750	5.125
April 1, 2009	4.5	4.500	4.625
July 1, 2009	4.5	4.375	4.375
October 1, 2009	4.5	4.375	4.250
January 1, 2010	4.5	4.250	4.000
April 1, 2010	4.5	4.250	4.125
July 1, 2010	4.5	4.250	4.000
October 1, 2010	4.5	4.125	3.750
January 1, 2011	4.5	4.375	4.250
April 1, 2011	4.5	4.625	4.750
July 1, 2011	4.5	4.375	4.250
October 1, 2011	4.5	4.125	3.875
April 1, 2012	4.5	3.875	3.375
July 1, 2012	4.5	4.000	3.500
January 1, 2013	4.5	3.750	3.125
April 1, 2013	4.5	4.000	3.500
October 1, 2013	4.5	4.500	4.625
January 1, 2014	4.5	4.375	4.000
April 1, 2014	4.5	4.250	4.000
July 1, 2014	4.5	4.250	4.000
January 1, 2015	4.5	4.125	3.750
April 1, 2015	4.5	4.000	3.500
July 1, 2015	4.5	4.000	3.625

Effective Dates and Interest Rates
Community and Business Programs

COMMUNITY PROGRAMS (CON.)

<u>Effective Date</u>	<u>Poverty Line Rate (%)</u>	<u>Intermediate Rate (%)</u>	<u>Market Rate (%)</u>
October 1, 2015	4.5	3.875	3.250
January 1, 2016	4.5	3.750	3.125
April 1, 2016	4.5	3.625	2.875
July 1, 2016	4.5	3.625	2.750
October 1, 2016	4.5	3.375	2.375
January 1, 2017	4.5	3.875	3.375
July 1, 2017	4.5	3.875	3.250
October 1, 2017	4.5	4.000	3.500
April 1, 2018	4.5	4.125	3.875

BUSINESS & INDUSTRY INSURED PROGRAM

<u>Effective Date</u>	<u>Insured Rate (%)</u>	<u>Insured Rate (%) Used To Finance Community Facilities</u>
November 1, 1979	10.750	5.0
December 15, 1979	11.625	5.0
January 8, 1980	12.500	5.0
April 7, 1980	13.500	5.0
April 12, 1980	14.500	5.0
June 28, 1980	12.875	5.0
August 14, 1980	11.500	5.0
December 11, 1980	14.000	5.0
October 1, 1981	14.000	12.250
January 1, 1982	14.000	11.375
April 1, 1982	14.000	12.375
July 1, 1982	14.000	11.625
October 1, 1982	14.000	10.625
January 1, 1983	14.000	9.750
April 1, 1983	14.000	9.125
December 1, 1983	14.000	9.500

oOo