

**§ 3560.702 Unauthorized assistance sources and situations.**

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance.

(b) Unauthorized assistance may result from situations such as:

- (1) Assistance being provided to an ineligible borrower or tenant;
- (2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;
- (3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or
- (4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

**§ 3560.703 Identification of unauthorized assistance.**

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying and pursuing repayment of unauthorized assistance received by tenants.

**§ 3560.704 Unauthorized assistance determination notice.**

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower. Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency a copy of the written notice to the tenant. The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

- (1) Specify the reasons the assistance was determined to be unauthorized;
- (2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (*i.e.*, the tenant or borrower) according to the provision of § 3560.708;
- (3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of

tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information which might alter the determination that the assistance received was unauthorized.

(b) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

**§ 3560.705 Recapture of unauthorized assistance.**

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance will include offsets and the use of private or public collection agents. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by the Agency prior to implementation. Repayment may be made either with a lump sum payment or through payments made over a period of time. Agency approval of a repayment schedule will take into consideration the best interest of the borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that

the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue the tenant for recovery of unauthorized assistance when the borrower's efforts are unsuccessful or where tenants have been evicted.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant household.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance.

**§ 3560.706 Offsets.**

Offsets will be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

**§ 3560.707 Program participation and corrective actions.**

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the Agency's programs if they have the legal and financial capabilities to do so. Approval considerations for such forbearance are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower prior to the determination that the interest rate was incorrect will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency concurs in a borrower request for approval to pay the unauthorized assistance amounts due through a separate repayment process.