UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice FC-189

1980-B

For: State and County Offices

Servicing Shared Appreciation Agreements (SAA's) for Written Down Guaranteed Farm Loans

Approved by: Deputy Administrator, Farm Loan Programs

Carolyn B. Cooksie

1 Overview

A Background

A borrower executes SAA (FmHA Instruction 1980-B, Exhibit F) according to FmHA Instruction 1980-B, Section 1980.125(c), when they receive a writedown of a guaranteed loan secured by real estate. SAA requires the borrower to repay the lender for a portion of the writedown and the lender to repay the Agency its pro-rata share of the recaptured amount.

B Purpose

This notice clarifies FSA policy and procedures for handling SAA's that expire or are triggered and establishes procedures for reminding lenders of outstanding SAA's.

Note: Two sample letters are provided.

- The first letter (Exhibit 1) is to notify lenders of an expiring SAA.
- The second letter (Exhibit 2) is an example that lenders may use to remind borrowers with an SAA in effect.

C Contact

If there are questions about this notice, contact Phillip Elder, LSPMD, Guaranteed Loan and Inventory Property Branch, at 202-690-4012.

State Offices may implement the requirements of this notice through issuance of a State notice or instruction. Any revisions or modifications to this notice must be approved by DAFLP, unless revision is specifically required by State law.

Disposal Date	Distribution
April 1, 1999	State Offices; State Offices relay to County Offices

2 Supervising Shared Appreciation Agreements

A
Lender Monitoring Responsibilities

The lender is responsible for monitoring the borrower's compliance with SAA, notifying the borrower of the amount of recapture due, and reimbursing the Agency for its pro-rata share of the recapture amount received.

B
Determining Appreciation

The lender is responsible for documenting the difference between the value of the security at the time recapture is triggered and the value of the security at the time of writedown. This amount will be determined through appraisals obtained by the lender. The lender may recoup the appraisal expense from the borrower.

3 Collecting and Processing Recapture of Shared Appreciation

A
Lump Sum Payment

Payments of recapture will be processed by completing FmHA 449-30, with item 3A coded as a Type 8, and forwarding this form, with the payment, to KCMO, St. Louis, Finance Office.

B
Amortized Recapture

The lender shall pay the Agency its pro-rata share of any recapture collected. SAA permits the recapture amount to be rescheduled or reamortized if the borrower is unable to pay the amount due upon expiration of the agreement.

C
Application of Payments

Lenders who amortize the recapture receivable may apply borrower payments to the recapture, after paying the Agency its pro-rata portion of these payments, before applying a payment to their guaranteed loan.

D
Reminder Letters

Reminder letters may be sent at any time to those lenders with guaranteed borrowers who have received a writedown. A reasonable guideline would be to send letters to those lenders with an account which was written down over 5 years ago, as well as in those cases where the County Office believes another triggering action occurred or will occur in the near future.

Sample Letter for Reminding Lenders of Guaranteed Loan Accounts That Received a Writedown

Lender's Address

Dear (Lender's Representative or Sir/Madam):

Our records indicate that the Farm Service Agency (FSA) (formerly the Farmer's Home Administration), paid your institution $_____ onMonth, Day, Year, to reimburse it for the guaranteed portion of a $_____ loss that you suffered by writing down the account of your borrowerBorrower's Name. This letter is to remind you that the borrower signed a Shared Appreciation Agreement (SAA) in connection with this writedown and you are obligated to monitor that agreement. We have attached a copy of the SAA for your reference and provided you with a letter that you may use to remind your borrower of the potential for recapture under the SAA.

The SAA requires the borrower to repay all or a portion of the debt written down as a result of an increase in value of the real estate that secured the loans written down. This recapture is triggered by any of the following events:

- 10 years have passed since the borrower executed the SAA
- title to the real estate security (or a portion thereof) was conveyed by the borrower to someone other than the borrower's spouse upon the death of the borrower
- the loans have been repaid
- the borrower quits farming.

Please review your records, consult with the borrower, review land records, or take other actions to determine if any of the triggering actions have occurred in this case. If so, you should inform the borrower of the amount that they owe your institution under the terms of their agreement. If the SAA has not been triggered, you may still wish to remind the borrower of the terms of this agreement, in order to allow sufficient time for them to plan for this possibility. You are responsible for obtaining any appraisals necessary to document the amount of appreciation; however, you may pass the expense to the borrower.

I sincerely appreciate your efforts to meet the credit needs of the farmers in our area. If you would like any additional information or assistance on this subject, please contact this office.

Sincerely,

Loan Servicing Official

Enclosure

Sample Letter for Reminding Guaranteed Loan Borrowers of Potential Writedown Recapture

Borrower's Address

Dear (Borrower):

On Month, Day, Year, *Name of Lender* wrote down $_____ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA) (formerly the Farmer's Home Administration). In consideration for receiving this writedown, you executed a 10-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have attached a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value and one of the following occurs:

- 10 years have passed since you signed the Agreement
- title to the real estate security (or a portion thereof) was conveyed (with certain exceptions)
- the remainder of the loan has been repaid
- you have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative

Enclosure