



FARMERS' LEGAL
ACTION GROUP
INCORPORATED

46 East Fourth Street Suite 1301
Saint Paul, Minnesota 55101

Phone: 651.223.5400
Fax: 651.223.5335

Internet:
lawyers@flaginc.org

Web site:
www.flaginc.org

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Desk Officer for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)
Washington, D.C. 20503

Dear Sir or Madam:

Farmers' Legal Action Group submits these comments on behalf of the National Family Farm Coalition concerning the Farm Service Agency (FSA) submission for OMB Review entitled "Farmer Program Account Servicing Policies—7 C.F.R. Part 1951-S" published at 65 Fed. Reg. 48,446, 48,447 (Aug. 8, 2000). This submission follows a proposed rule entitled "Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements" published at 64 Fed. Reg. 61221-61223 (Nov. 10, 1999). This proposed rule has not yet been finalized.

This submission for OMB Review seeks approval of changes in the information collection process to require borrowers to document the value of improvements made to real estate which secured a shared appreciation agreement between the time a shared appreciation agreement (SAA) was entered into and the time it matured.

We have consistently called for speedy implementation of policies to relieve the extreme financial burden that the SAA recapture notices have placed upon many farm borrowers, and appreciate the fact that FSA is requesting emergency approval of this submission by August 11. However, we must point out that, as written, the submission to OMB will be of limited practical utility. The quality, utility, and clarity of information to be collected will be enhanced if FSA adopts a policy of considering any evidence which helps to establish the added value of capital improvements.

Tax returns of borrowers may provide some relevant information, but many farm borrowers may not have made a comprehensive list of every capital improvement and its appreciation or depreciation on their tax

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returns. Even farmers who documented some aspects of their capital improvements in their tax returns may no longer have these tax returns. The ten years between entering into a SAA and the exercise of the recapture provision argue in favor of a generous evidentiary policy. Such a policy would allow farmers to submit any type of evidence available to prove the value of capital improvements, rather than limiting evidence to tax return documents exclusively. Having a wider range of information will enable FSA to better evaluate the fair market value of the real estate security.

Providing the additional information would be to the borrower's benefit, so the burden of the information collection process is minimal. Borrowers are likely to view the process as more fair if they are given the opportunity to provide all relevant information than if they are denied the opportunity to deduct verifiable capital improvements simply because they could not prove them through the use of one particular type of document.

FLAG submitted comments on the original proposed rule (Letter to Director of Farm Loan Programs dated January 10, 2000) endorsing the basic premise that USDA should deduct the amount contributed by capital improvements undertaken after the SAA was executed from the appraised value of the security property at the time the recapture provisions of the SAA are exercised. Nonetheless, we urged USDA to modify the rules by expanding the categories of capital improvements whose contributory value must be deducted from the appraisal. The proposed rule would have limited deductions to structures such as "dwellings, barns, grain storage bins, and silos." In our comments, we pointed out that some of the improvements which most increase the value and earning capacity of farmland are not structures, but are new orchards and vineyards, fencing, tiling, irrigation, terracing, land waterways, shelter belts, and other conservation measures encouraged by USDA in its other programs. FSA should clarify whether it has adopted this broader understanding of "capital improvement" for information collection purposes.

Thank you for your consideration of these comments.

Sincerely,

Jill E. Krueger
Attorney at Law
Farmers' Legal Action Group, Inc.
Direct Internet: jkrueger@flaginc.org