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Memorandum

To: Farmers and Farm Advocates Interested in Shared Appreciation Agreement Issues

From: Karen R. Krub

Date: May 2, 2001

Subject: Change to Definition of "Improvement" for SAA Recapture Calculations

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On August 18, 2000, FSA finally issued a rule providing for the deduction of certain capital improvements when calculating appreciation for the purpose of determining recapture under a Shared Appreciation Agreement (SAA). You should have received a memo discussing this rule and a copy of the rule language last August.

On December 26, 2000, FSA issued a "correction" that made a small, but potentially significant change to the August rule. The correction added language to the effect that only "living area square footage" would qualify for a deduction in cases of expansion of a home that was on the property when the SAA was executed. The new rule specifies that patios, porches, garages, and "similar additions" will not be considered living area square footage.

The change means that any value added to property during the 10-year term of the SAA that is due to the addition or expansion of a patio, porch, garage, or any other structure not considered "living area" will <u>not</u> be deducted by FSA when it determines the amount of appreciation and amount of recapture. However, it is important to keep in mind that another section of the August rule provides for deduction of any improvement that is affixed to the property, has a useful life of more than one year, and was not taken as an annual operating expense on the borrower's federal income tax records. 7 C.F.R. § 1951.914(c)(1)(iii)(B) (2001). This section was not changed by the December correction. Arguably, garages and similar structures could be eligible for a deduction under this section, even though they are not living areas.

The citation for the correction is 65 Fed. Reg. 81,325 (December 26, 2000) A copy is enclosed.