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Memorandum

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

From: Jill Krueger

Date: May 3, 2001

Subject: FSA Issues Notice Lowering Interest Rate for SAA Repayment
Loans

The Farm Service Agency (FSA) recently announced changes in how it will calculate the interest due on Shared Appreciation Agreement (SAA) payment agreements.

As discussed in a memo sent to you in December 2000, the 2001 Agricultural Appropriations Act ("the Act") lowered the interest rate for amortized payments of the appreciation recaptured under SAAs. The Act provided that the rate would be one percent below the rate for FSA's Homestead Protection Program. This results in a rate significantly lower than the non-program rate used for the first SAA payment agreements. The new interest rate is to apply as of the date the Act was signed—October 28, 2000—to *all* SAA payment agreements that existed at that time, as well as all future ones.

FSA Issues Notices Implementing Statutory Change

On December 12, 2000, FSA issued a notice (FSA Notice FLP-179) implementing the interest rate change for all SAA payment agreements entered into on December 12 or later. This notice should govern if farmers who had signed suspension agreements now choose to enter into payment agreements.

On April 4, 2001, FSA issued another notice (FSA Notice FLP-198), this time implementing the interest rate reduction for borrowers who entered into an SAA payment agreement prior to December 12, 2000.

A copy of the December notice (FLP-179) was sent to you with the December memo, which discussed its contents in more detail. A copy of the April notice (FLP-198) is enclosed with this mailing.

Borrowers Whose Promissory Notes Do Not Reflect Interest at a Rate One Percent Below the Homestead Protection Rate May Be Affected

Notice FLP-198 applies to borrowers with an SAA who entered into an agreement to pay the SAA recapture over a specified period of time. It applies to all such borrowers who:

entered into an SAA payment agreement before October 28, 2000.

entered into an SAA payment agreement between October 28, 2000, and December 12, 2000, unless the original agreement incorporated the lower interest rate required by the Act.

Presumably, the notice would also apply to any borrower who entered into an SAA payment agreement after December 12, 2000, but whose agreement did not incorporate the interest rate required by the Act and FSA Notice FLP-179.

Borrowers Should Receive an "Allonge"

An "allonge" is an amendment to a promissory note—in this case, an SAA payment agreement—that is attached to the note and signed by the parties. Notice FLP-198 directs local FSA offices to send out allonges to borrowers whose interest rate was lowered as a result of the Act. The allonge will set out the payment schedule for the remainder of the payment agreement. The calculations for the payment schedule will vary, based on when borrowers made their last payment.

The notice does not set out a deadline by which the allonges must be sent. Farmers who have a payment due soon, but who have not yet received an allonge, may wish to contact their County Office to request one.

Borrowers Who Have Made a Payment Since October 28, 2000

Borrowers who have made a payment on an SAA payment agreement since October 28, 2000, may have paid more than they owed under the law. Borrowers in this group will have their revised payment schedule calculated according to Exhibit 1 of the notice, which should give the borrower credit for any overpayment. After FSA has calculated the revised payment schedule at an interest rate of 1% below the Homestead Protection rate, it will prepare an allonge and send it to the borrower.

Borrowers Who Have Not Made a Payment Since October 28, 2000

Borrowers who have not made a payment since October 28, 2000, will have their revised payment schedule calculated according to Exhibit 2 of the notice. The payments should be lower as a result of the reduced interest rate. After FSA has calculated the revised payment

schedule at an interest rate of 1% below the Homestead Protection rate, it will prepare an allonge and send it to the borrower.

Delinquent SAA Payment Agreements

Notice FLP-198 directs County Offices to change the interest rate, but leave the payment amount unchanged, for delinquent borrowers. Borrowers who are delinquent on their SAA payment agreements should work closely with their County Offices to find out if they are eligible for loan servicing.

What Should a Borrower Who Receives an Allonge Do?

FSA will send a letter to borrowers explaining the requirements of the Act and the purpose of the allonge. The letter will ask borrowers to sign both copies of the allonge, return one copy to FSA, and keep the other copy with their copy of the payment agreement. The sample letter in Exhibit 4 of Notice FLP-198 does not give any deadline for borrowers to sign and return the allonge.

The procedures set forth in the notice involve some complicated calculations. Affected farmers may want to ask a tax advisor, attorney, farm advocate, or other financial advisor to review any amendment to their promissory note prepared by FSA before signing it. **Borrowers should sign an amendment only once they are satisfied that it carries out the intent of the Act by charging them with an interest rate that is 1% below the Homestead Protection rate, beginning on October 28, 2000.**

What If a Borrower Thinks There Is a Mistake in an Allonge?

The letter in Exhibit 4 to Notice FLP-198 does not mention appeal rights. However, a borrower could argue that the letter and allonge constitute an adverse decision if the revised payment schedule is not correctly calculated to carry out the requirements of the Act. The borrower may wish to appeal to the National Appeals Division (NAD). The borrower should be sure to comply with all NAD rules, including deadlines.