

# Shared Appreciation Agreements (SAAs)

5/3/01, Farmers' Legal Action Group, Inc.

**CAUTION:** This document provides general information about SAAs, but each borrower should carefully look at his or her own agreement for specific requirements and should seek individual assistance for any problems or questions.

## What Is a Shared Appreciation Agreement (SAA)?

As of late 1988, whenever a farm loan borrower receives a write-down of debt owed to the Farmers Home Administration (FmHA)—now the Farm Service Agency (FSA)—the borrower must sign a Shared Appreciation Agreement (SAA). At the same time, the borrower usually also signs a mortgage or other security agreement securing the SAA.

An SAA is a contract between FmHA/FSA and the borrower in which the borrower promises to pay a certain amount of money in the future if the property securing the agreement increases in value, allowing FmHA/FSA to “recapture” all or a portion of the write-down amount.

## When Do I Have to Pay Under an SAA?

FSA regulations list a number of “trigger” events that require payment under the SAA:

- Transfer of security property (other than to spouse upon death of the borrower).
- You stop farming and stop receiving farm income, including lease income.
- You pay the debt in full.
- Acceleration of the written-down debt. [This trigger was added on March 10, 1998.]

If none of these trigger events occur within ten years after the write-down, the SAA will “expire” on the ten-year date. (Beginning August 18, 2000, the maximum term for all new SAAs is five years.) Whether the SAA is triggered or expires, if there has been appreciation in the value of the security property FSA will send you a notice claiming that a recapture payment is due.

## How Much Do I Have to Pay Under an SAA?

The amount you must pay under an SAA depends on how much the security property has appreciated from the time the SAA was signed to the time when payment is due. If there has been no appreciation in the property's value, no payment is due under the SAA.

If payment under the SAA is triggered within the first four years after the write-down, you must pay 75 percent of the increase in value of the security property. If payment is triggered more than four years after the write-down you must pay 50 percent of the increase in value of the security property. FmHA/FSA will never ask you to pay more under the SAA than the amount that was written down on the original debt.

**How Does FmHA/FSA Decide How Much I Have to Pay?**

FmHA/FSA will notify you of the appreciated value and the amount due under the SAA. Appreciation in property value will be found by comparing the appraised value at the time of the write-down with an appraisal done no more than one year before the SAA calculation is made.

**Can I Deduct My Capital Improvements From the Appraised Value of My Farm?**

Under a new FSA regulation that became effective on August 18, 2000, borrowers may be able to request a deduction from the appraised value of their farm for certain capital improvements. According to this regulation, only two types of capital improvements may be deducted: (1) expansion or replacement of the borrower's primary residence that added valuable "living area" square footage; and (2) any improvements to your real estate that have a useful life of over one year, that are affixed to your property, and that were capitalized on your federal income tax return(s). FSA will ask for documentation to support the deduction.

For borrowers who had an SAA expire before August 18, 2000, if you signed a suspension agreement, FSA should reconsider the appraised value of your property to take capital improvements into consideration. Borrowers who did not sign a suspension agreement, or who had a suspension agreement expire without renewing, should request that FSA officials deduct any capital improvements made from the appraised value of the property. FSA officials have indicated that these deductions may be allowed for borrowers whose SAA obligations are not yet considered to be in default. According to FSA, borrowers who received their final notice of default with regard to their SAA obligation may no longer be eligible to receive the deduction.

**Can I Suspend My SAA Payment?**

The FSA issued emergency regulations effective April 23, 1999, allowing some borrowers with SAAs that expired on or before December 31, 2000, to suspend their SAA payment obligations for one to three years. To qualify for the suspension for the first year you must self-certify in writing that you cannot afford to pay the recapture amount in a lump sum. The suspension agreement may be renewed for a second and third year. Prior to renewing FSA will determine, based on a Farm and Home Plan, the portion of the recapture amount that you are still unable to pay. The suspension in years two and three will be limited to this amount. Interest accrues during the suspension term at the Homestead Protection rate (6.0% as of March 1, 2001).

**How is an SAA Recapture Payment Treated for Tax Purposes?**

Recapture under an SAA can create complex tax issues. Generally, a borrower who makes an SAA recapture payment is permitted an adjustment that reverses the tax treatment that occurred at the time of the debt write down. You should consult a tax attorney or CPA with your individual tax questions.

**Can I Challenge the Amount I Have to Pay?**

The notice FmHA/FSA sends borrowers to tell the amount due under an SAA will state that you have 30 days from receipt of the letter to do any (or all) of the following:

- Submit a written request for reconsideration of the calculations used by FmHA/FSA.
- Submit an independent appraisal for consideration by FmHA/FSA (the appraisal must be done by a qualified appraiser following FSA regulations).
- Request mediation.
- Request an appeal from USDA's National Appeals Division (NAD).

If you want to challenge the appraised value used by FmHA/FSA, you may get an independent appraisal. If the independent appraisal and the FmHA/FSA appraisal differ by no more than 5 percent, you will be allowed to choose which appraisal to use. You can also use the independent appraisal as evidence in a NAD appeal hearing. In the hearing you will need to show NAD why FmHA/FSA's appraisal is wrong under appraisal standards and FmHA/FSA regulations. If on appeal NAD finds the FmHA/FSA appraisal contains mathematical, descriptive, or technical errors or does not meet professional standards, NAD will remand to FmHA/FSA for correction or a new appraisal. NAD will generally not hear arguments on the appraiser's judgment calls that may be incorrect.

CAUTION: If you intend to seek FmHA/FSA financing for the recapture amount due once your challenge has been resolved and any necessary changes made, you must be sure to satisfy all deadlines for requesting financing. This is true even while your challenge is pending. See the following section for more information.

### **Can I Get FmHA/FSA Financing to Pay the SAA Debt?**

Upon receiving notice from FmHA/FSA stating the amount due under your SAA, you will have 30 days from receipt of the notice to request financing of the SAA amount. If you are appealing the amount due from your SAA it appears that you must still request financing within the 30-day period, but the request will not be processed until your appeal is final and any resulting changes are made in the amount due.

FmHA/FSA financing will only be available if you are:

- (1) continuing with other FmHA/FSA loans,
- (2) unable to pay or borrow the amount due under the SAA, and
- (3) able to show repayment ability.

As of October 28, 2000, SAA financing is available for SAA loans financed through FmHA/FSA at one percent below the Homestead Protection interest rate. Congress enacted a law that makes this rate applicable to all existing and future SAA amortizations and loans. (The Homestead Protection interest rate was 6.0% as of April 1, 2001, so the SAA financing interest rate was 5.0%). Borrowers can amortize payment of the SAA recapture amount for up to twenty-five years.

### **What Happens If I Cannot Pay the SAA Debt?**

If you cannot pay the SAA amount and cannot get financing, and your repayment obligation is not suspended, you will become delinquent on the SAA debt and FmHA/FSA will proceed with collection and liquidation of the security. In limited circumstances, FmHA/FSA may permit borrowers a partial debt settlement of their SAA payment even if previous debt forgiveness has been received.