1-7-2000

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HANDLING SHARED APPRECIATION MORTGAGES

— by Neil E. Harl.

The Agricultural Credit Act of 1987 authorized shared appreciation agreements (up to 10 years in duration) for debt structurings. The appreciation recapture was set at 75 percent of any appreciation in fair market value of the collateral if, within four years, the loan is paid off, the borrower ceases farming or the borrower transfers the property. The borrower pays 50 percent of any appreciation if the triggering event occurs after four years or, if not, upon termination of the agreement (up to 10 years).

Currently, more than 11,900 shared appreciation agreements have been executed on debt write-down of over $1.7 billion. Approximately 6500 of the agreements are currently in effect and will become due over the next 10 years.

A major concern is how to handle payments under the shared appreciation arrangements.

Proposed regulations

The Farm Service Agency (FSA) has proposed three changes to the regulations already in place dealing with shared appreciation arrangements—(1) the term of new shared appreciation agreements would be reduced to five years; (2) allowance would be made for capital improvements made to property covered by an existing or future shared appreciation agreement under FSA direct loans (the value of improvements made to the collateral after the shared appreciation agreement was entered into could be deducted for purposes of calculating appreciation in value); and (3) the interest rate charged on shared appreciation loans would be reduced from the current nonprogram rate to near the federal borrowing rate (the rate would be the "Farm Program Homestead Protection Rate.")

Comments on the proposed regulations are due by January 10, 2000.

Interim regulations providing relief

On April 23, 1999, The Farm Service Agency announced, in interim regulations, that borrowers with shared appreciation agreements ending in 1999 and 2000 who have not paid their obligation or made arrangements to pay and cannot now pay the amount owed are allowed to have part or all of the obligation suspended for one year. If USDA determines that the borrower still cannot pay after one year, the suspension may be renewed not more than twice. During the suspension period, the obligation accrues interest at the federal borrowing rate. Apparently, the suspension does not change the calculation of the amount owed (does not change the date for calculating property values, for example).

Handling payments

If, after the write down or buy-out of a farm loan, the FSA borrower makes a payment under a shared appreciation agreement, the borrower generally is permitted

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The funds received under that program were assistance under the 1998 Crop Loss Disaster Assistance. The debtor suffered crop losses in 1998 and filed for federal farm program payments to be received by the debtor. From a bank and granted the bank a security interest in any funds deposited and allowed the bank relief from the automatic stay. The court held that the assignment provision was intended only to protect the federal government and did not affect security interests between a debtor and creditor. The court held that the bank’s security interest was perfected and allowed the bank relief from the automatic stay. In re Endicott, 239 B.R. 529 (Bankr. E.D. Ark. 1999).

FOOTNOTES
2 See 7 C.F.R. § 1951.909.
4 Id.
6 Id.
7 7 C.F.R. § 1951.914(b).
8 7 C.F.R. § 1951.914(c)(1).
9 7 C.F.R. § 1951.914(e)(6).
12 Id.
13 Id.
15 Id.
17 Id.