

(iii) The lessee or designee demonstrates an ability to repay such an FLP loan; and

(iv) The lessee or designee is otherwise eligible for the FLP loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of homestead protection property.* The Agency will use an appraisal obtained within six months from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the Agency.

[72 FR 63316, Nov. 8, 2007, as amended at 76 FR 5058, Jan. 28, 2011]

#### § 766.155 Conflict with State law.

If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.

#### §§ 766.156–766.200 [Reserved]

### Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

#### § 766.201 Shared Appreciation Agreement.

(a) *When a SAA is required.* The Agency requires a borrower to enter into a SAA with the Agency covering all real estate security when the borrower:

(1) Owns any real estate that serves or will serve as loan security; and

(2) Accepts a writedown in accordance with § 766.111.

(b) *When SAA is due.* The borrower must repay the calculated amount of shared appreciation after a term of 5 years from the date of the writedown, or earlier if:

(1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;

(2) The borrower repays or satisfies all FLP loans;

(3) The borrower ceases farming; or

(4) The Agency accelerates the borrower's loans.

#### § 766.202 Determining the shared appreciation due.

(a) The value of the real estate security at the time of maturity of the SAA (market value) will be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The market value of the real estate security property will be determined based on a current appraisal completed within the previous 12 months in accordance with § 761.7 of this chapter, and subject to the following:

(1) Prior to completion of the appraisal, the borrower will identify any capital improvements that have been added to the real estate security since the execution of the SAA.

(2) The appraisal must specifically identify the contributory value of capital improvements made to the real estate security during the term of the SAA to make deductions for that value.

(3) For calculation of shared appreciation recapture, the contributory value of capital improvements added during the term of the SAA will be deducted from the market value of the property. Such capital improvements must also meet at least one of the following criteria:

(i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the market value.

(ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:

(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower