

## §617.7315

writing of the decision and the reasons for the decision.

### **§617.7315 What records must the qualified lender maintain on behalf of the CRC?**

A qualified lender must maintain a complete file of all requests for CRC reviews, including participation in state mediation programs, the minutes of each CRC meeting, and the disposition of each review by the CRC.

## **Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs**

### **§617.7400 What protections exist for borrowers who meet all loan obligations?**

(a) A qualified lender may not foreclose on a loan because the borrower failed to post additional collateral when the borrower has made all accrued payments of principal, interest, and penalties on the loan.

(b) A qualified lender may not require a borrower to reduce the outstanding principal balance of a loan by any amount that exceeds the regularly scheduled principal installment when due and payable, unless:

(1) The borrower sells or otherwise disposes of part, or all, of the collateral without the prior approval of the qualified lender and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in writing.

(c) After a borrower has made all accrued payments of principal, interest, and penalties on a loan, the qualified lender may not enforce acceleration of the borrower's repayment schedule due to the borrower's untimely payment of those principal, interest, or penalty payments.

(d) If a qualified lender places a loan in non-interest-earning status and this results in an adverse action being taken against the borrower, such as revoking any undisbursed loan commitment, the lender must document the change of status and promptly notify the borrower in writing of the action and the reasons for taking it. If the borrower was not delinquent on any principal, interest, or penalty payment

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at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of the denial before the CRC pursuant to §617.7310 of this part. The borrower must request this review within 30 days after receiving the lender's notice.

### **§617.7405 On what policies are loan restructurings based?**

Loan restructurings must be made in accordance with the policy adopted by the supervising bank board of directors under section 4.14A(g) of the Act.

### **§617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?**

(a) *What are the notice requirements?* When a qualified lender determines that a loan is, or has become, distressed, the lender must provide one of the following written notices to the borrower stating that the loan may be suitable for restructuring.

(1) A notice stating that the loan has been identified as distressed and that the borrower has the right to request a restructuring of the loan (nonforeclosure notice).

(2) A notice that the loan has been identified as distressed, that the borrower has the right to request a restructuring of the loan, and that the alternative to restructuring may be foreclosure (45-day notice). The qualified lender must provide this notice to the borrower no later than 45 days before the qualified lender begins foreclosure proceedings with respect to any loan outstanding to the borrower. This notice must specifically state that if the loan is restructured and the borrower does not perform under the restructure agreement (as described in §617.7410(e)), the qualified lender may initiate foreclosure proceedings without further notice.

(b) *What should each notice include?* (1) A copy of the policy the qualified lender established governing the treatment of distressed loans; and

(2) All materials necessary for the borrower to submit an application for restructuring.

(c) *What notice should a qualified lender send to a borrower who is a debtor in a bankruptcy proceeding?* The qualified

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lender should send a notice that identifies the loan as distressed and the statutory right to file an application for a restructuring. The notice may also restate the language from the automatic stay provision to emphasize that the notice is not intended as an attempt to collect, assess, or recover a claim.

(d) *Whom should the qualified lender notify?* The qualified lender is required to notify all primary obligors. If the obligors identify one party to receive notices, the qualified lender should send the original notice to that person and send copies to the other obligors. For borrowers in a bankruptcy proceeding, the qualified lender should send the notice to the borrower and, if retained, the borrower's counsel.

(e) *When is a qualified lender required to send another restructure notice to a borrower whose loan was previously restructured?* A qualified lender must notify a borrower of the right to file another application to restructure the loan if the qualified lender sent the nonforeclosure notice to the borrower and the borrower has performed on the previous restructure agreement. Performance means that a borrower has made six consecutive monthly payments, four consecutive quarterly payments, three consecutive semiannual payments, or two consecutive annual payments. However, a qualified lender is not required to send another notice if they previously sent a 45-day notice, as described in §617.7410(a)(2), and a borrower did not perform under a restructure agreement, as described above.

(f) *Does the borrower have the opportunity to meet with the qualified lender after receiving the restructure notice?* The qualified lender must provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender. The borrower and lender may meet to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring. A meeting to discuss a loan that is in a non-interest-earning status may also involve developing a plan for restructuring, if the qualified lender determines the loan is suitable for restructuring.

(g) *May the qualified lender voluntarily consider restructuring for a borrower who did not submit a restructuring application?* A qualified lender may, in the absence of an application for restructuring from a borrower, propose restructuring to an individual borrower.

### §617.7415 How does a qualified lender decide to restructure a loan?

(a) *What criteria does a qualified lender use to evaluate an application for restructuring?* The qualified lender should consider the following:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure, considering all relevant criteria. These criteria include:

(i) The present value of interest and principal foregone by the lender in carrying out the application for restructuring;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the application for restructuring;

(iii) Whether the borrower's application for restructuring included a preliminary restructuring plan and cash flow analysis, taking into account income from all sources to be applied to the debt and all assets to be pledged, that show a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished, or is willing to furnish, complete and current financial statements in a form acceptable to the qualified lender.

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructuring of the loan, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and