

## Farm Credit Administration

## §617.7415

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

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not have to be placed into non-interest-earning status in the future.

(b) *What should be included in determining the cost of foreclosure?* (1) The difference between the outstanding balance due, as provided by the loan documents, and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan classified as a high-risk asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of value changes in collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(c) *What should the qualified lender do if the borrower and the qualified lender cannot agree on the financial projections used in the application for restructuring?* If the borrower and lender are not able to agree on supportable or realistic financial projections, the lender may use benchmarks to determine the operational input costs and chattel security values. These benchmarks may include, but are not limited to, the borrower's 5-year production average; averages in the county where the farming operation is located, based on data from United States Department of Agriculture, local colleges or universities, or other recognized authority; and other such reasonable sources.

(d) *How does the qualified lender decide whether to restructure or foreclose?* If a qualified lender determines the potential cost to the lender of restructuring the loan as proposed in the application for restructuring is less than or equal to the potential cost of foreclosure, the

qualified lender must restructure the loan. If two or more restructuring alternatives are available, the qualified lender must restructure the loan using the alternative that results in the least cost to the lender.

(e) *What documentation should the qualified lender retain?* In the event that an application for restructuring is denied, a qualified lender must maintain sufficient documentation to demonstrate compliance with paragraphs (a), (b), and (c) of this section, as applicable.

**§617.7420 How will a decision on an application for restructuring be issued?**

(a) *When must a qualified lender make a decision on an application for restructuring?* Each qualified lender must provide a written decision on an application for restructuring and provide this decision to the borrower within 15 days from the conclusion of the negotiations used to develop the application for restructuring.

(b) *How does a qualified lender notify the borrower of the decision?* On reaching a decision on an application for restructuring, the qualified lender must provide written notice in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the original notice may be provided to the primary obligor identified to receive such notice, with copies provided by regular mail to the other obligors.

(c) *What notice is required if the restructuring request is denied?* When an application for restructuring is denied, the notice must include:

(1) The specific reason(s) for the denial and any critical assumptions and relevant information on which the specific reasons are based, except that any confidential information shall not be disclosed;

(2) A statement that the borrower may request a review of the denial;

(3) A statement that any request for review must be made in writing within 7 days after receiving such notice.

(4) A brief explanation of the process for seeking review of the denial, including the appraisal review process and the right to appear before the CRC,