§ 617.7120 How should a qualified lender present the disclosures to a borrower?

A qualified lender must:

(a) Disclose the effective interest rate and other information required by subparts B and C of this part clearly and conspicuously in writing, in a form that is easy to read and understand and that the borrower may keep; and

(b) Not combine the disclosures with any information not directly related to the information required by §§ 617.7130 and 617.7135.

§ 617.7125 How should a qualified lender determine the effective interest rate?

(a) A qualified lender must calculate the effective interest rate on a loan using the discounted cash flow method showing the effect of the time value of money.

(b) For all loans, the cash flow stream used for calculating the effective interest rate of a loan must include:

(1) Principal and interest;

(2) The cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and

(3) Loan origination charges described in § 617.7115(a).

(c) A qualified lender must establish policies and procedures for EIR disclosures that clearly show the effect of the cost of borrower stock and loan origination charges on the interest rate of a loan. A qualified lender must also establish policies and procedures for determining major assumptions used in calculating the effective interest rate, *e.g.*, criteria on how the cost of borrower stock and loan origination charges are assigned or allocated among multiple loans obtained by a borrower simultaneously.

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;

(6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

(a) *Notice of interest rate change.* (1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

(i) The new interest rate on the loan;

(ii) The date on which the new rate is effective; and

(iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change within forty-five (45) days after the effective date of the change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock or participation certificates a borrower must own during the term of a loan, the lender must send a written notice to borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

(1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;

(2) The date on which the new rate is effective; and

(3) The reason for the increase in the borrower stock purchase requirement.

Subpart C—Disclosure of Differential Interest Rates

§ 617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2401 Filed 2–3–03; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 609, 614, 615, and 617

RIN 3052–AB69

Electronic Commerce; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Borrower Rights

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: These proposed rules clarify existing provisions, respond to comments, and reorganize the rules into a separate section of FCA (agency, we, or our) regulations. This update will help agricultural borrowers and institutions of the Farm Credit System (FCS or System) better understand the rights Congress afforded applicants and borrowers of the System. We intend for the proposal to clarify how FCS institutions should apply these rights to applicants and borrowers.

DATES: Written comments should be received on or before April 7, 2003.

ADDRESSES: You may submit comments by electronic mail to *''reg–comm@fca.gov''* or through the Pending Regulations section of our Web site at *''http://www.fca.gov.''* You may also mail or deliver written comments to Thomas G. McKenzie, Director,

Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479, TTY (703) 883–4434;

Or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of these proposed rules are to:

- Ensure that the borrower rights regulations provide the protection to applicants and distressed borrowers as mandated by the Farm Credit Act of 1971, as amended (Act).[1]
- Avoid placing unnecessary burdens on FCS institutions.
- Use plain language and a question and answer format.

II. Background

In the Farm Credit Amendments of 1985[2] and the Agricultural Credit Act of 1987,[3] Congress gave certain rights to borrowers of System institutions that operate under titles I and II of the Act. These rights include the right of review of certain loan decisions, the right to receive a notice when a loan becomes distressed, the opportunity to request a restructuring of a distressed loan, and the opportunity for the right of first refusal to repurchase or lease acquired agricultural real estate following foreclosure or voluntary conveyance. Collectively, these rights are referred to as borrower rights. On September 14, 1988, we published final borrower rights rules.[4] Since then we have observed differences in how System institutions apply these regulations and reviewed complaints from borrowers and applicants regarding their rights. To ensure that our expectations for borrower rights are clear, we propose these updated regulations.

[1] Pub. L. 92–181, 85 Stat. 583.

[2] Pub. L. 99–205, 99 Stat. 1678.

[3] Pub. L. 100–233, 101 Stat. 1568.

[4] 53 FR 35427 (September 14, 1988).

III. Comments Received

We received comments on our existing regulations prior to developing these proposed rules. The comments were in response to a June 23, 1993, regulatory burden solicitation [5] and a May 17, 2000, letter from the Farm Credit Council (FCC) on behalf of its member banks and associations.

IV. Redesignate Portions of Part 614 to Part 617

We propose redesignating the regulations from existing subparts H, L, and N of part 614 to part 617 of the regulations. This move will make the borrower rights rules more readily identifiable. We also propose conforming changes in §§ 609.910(c), 615.5280(h), and 615.5290(a) and (b) to part 617.

V. General Issues

We received comments on general issues of borrower rights applicability and relationship to other laws. We will address those first and then proceed to comments concerning specific issues.

A. Family Farmers [§ 617.7000]

The term ''loan,'' defined in section 4.14A(a)(5) of the Act and existing §§ 614.4440(g) and 614.4512(f), means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products. The FCC commented that we should restrict application of borrower rights to ''family farmers,'' which FCC defined to mean farmers with agricultural sales equal to or less than $500,000. The FCC's interpretation of the legislative history of the borrower rights legislation is that Congress intended to narrow the bargaining position between borrowers and the System institutions. The FCC believes that, with increased consolidation and sophistication of farming operations, the need for a level-bargaining position has decreased.

We recognize that the consolidation among agricultural producers has resulted in more sophisticated operators, but we do not believe Congress intended that the borrower rights legislation apply only to family farmers. The statutory definition of loans covered by borrower rights is clear, unambiguous, and does not distinguish between types of farmers, nor does it contain any sales or income limitations. Although Congress considered limiting borrower rights to only family farmers when this legislation was being debated, it ultimately chose not to do so. The Senate bill limited borrower rights and provided a definition of family farmers.[6] Once the Senate and House bills were reconciled in conference, limiting borrower rights to family farmers was abandoned. Congress did not adopt the Senate's definition of family farmer. Instead, it adopted a definition of loan that includes all agricultural loans.[7]

We do not believe it is appropriate to restrict borrower rights to family farmers or farmers with agricultural sales of equal to or less than $500,000 as the FCC requested. Thus, we make no changes to the existing rules.

B. How Do Borrower Rights Apply to Loans That Are Sold to, Participated With, or Subordinated in Favor of Non-qualified Lenders? [§ 617.7015]

Section 4.14A(a)(5)(B) of the Act provides that borrower rights do not apply to loans sold into the secondary market. The FCC recommended defining loans sold into the secondary market to include participations, subordinated debt transactions, and other sales transactions that include non-qualified lenders. The FCC asserted that non-qualified lenders are hesitant to participate in such transactions with the System because of borrower rights requirements.

Loan sales to other lenders, participations, and subordinated debt transactions are not secondary market activities. We found no evidence that Congress intended the secondary market sales exemption to apply to other types of loan transactions.

We propose moving § 614.4336 from part 614, subpart H to § 617.7015 in part 617, subpart A.

C. Are Borrowers With Trade Credit Loans Excluded From Borrower Rights? [§ 617.7000]

The FCC commented that borrower rights are an impediment to an effective trade credit program. They suggested that borrowers purchase participation certificates instead of stock with trade credit loans in order to exempt such loans from borrower rights.

We do not agree with this comment and do not propose such a change. Existing § 614.4525(a) allows a qualified lender to ''enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its

[5] 58 FR 34003 (June 23, 1993).

[6] See S. Rep. No. 100–230 at 34, 109 (1987).

[7] See H.R. Conf. Rep. 100–490 at 164–165 (1987).

making of loans'' to eligible borrowers. For the purpose of applying borrower rights, a loan that is facilitated by a third-party dealer or other agent is no different from any other loan made by a qualified lender. As a direct loan, trade credit loans require that the borrower buy stock pursuant to section 4.3A of the Act. Further, trade credit loans meet the definition contained in part C of title IV of the Act and are subject to borrower rights.

VI. Specific Issues

A. Definitions [§ 617.7000]

We propose moving the existing definition sections in §§ 614.4440 and 614.4512 to proposed § 617.7000. The definitions of applicant (§ 614.4440(b)), foreclosure proceeding (§ 614.4512(e)), independent evaluator (§ 614.4440(f)), and qualified lender (§§ 614.4440(h) and 614.4512(g)) remain unchanged. We propose the following definitional changes.

1. Adverse Credit Decision [§ 614.4440(a) to Proposed § 617.7000]

The FCC and a System institution requested that we revise the definition of ''adverse credit decision'' in existing § 614.4440(a) to clarify its intent. According to the commenters, the definition has been incorrectly construed to mean a denial of a loan and all the loan terms requested by the applicant.

We agree with this comment and propose clarifying this definition by deleting the phrase ''deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for'' and replacing it with the following: (a) The lender decides not to make a loan to an applicant; (b) makes the loan in an amount less than the applicant requested; or (c) denies an application for restructuring. Making a loan in the amount requested, but with different terms, is not considered an adverse credit decision.

2. Application for Restructuring [§§ 614.4440(c) and 614.4512(a) to Proposed § 617.7000]

In response to a comment from the FCC, we propose to amend this definition to allow a borrower's plan of reorganization submitted in a bankruptcy proceeding to serve as the application for restructuring. We propose this change because the application for restructuring and the bankruptcy plan of reorganization contain similar information.

3. Distressed Loan [§§ 614.4440(e) and 614.4512(d) to proposed § 617.7000]

The FCC asked us to change our definition of a distressed loan to include all the loans from the qualified lender that the borrower is obligated to repay. We decline to change our definition because each loan separately must meet the definition of distressed.

4. Loan Application [§ 614.4440(d) to Proposed § 617.7000]

The FCC commented that we should clarify when a loan application is sufficiently complete to begin deliberations. FCC commented that qualified lenders need to distinguish between an inquiry and an application because an adverse decision on an application triggers borrower rights, but an inquiry does not. The FCC also suggested that we adopt the Regulation B definition of an application.[8]

We agree with the comment and propose changing the definition of a loan application to one similar to Regulation B. We propose adding language specifically describing a loan application as a package that provides the qualified lender with enough information to make a credit decision. Lenders should be mindful of the distinction between an application and an inquiry for purposes of borrower rights and Regulation B. Informal inquiries may rise to the level of applications if the lender evaluates information about the inquirer, decides to decline the request, and communicates this to the inquirer. Whether or not an inquiry is an application depends on the particular circumstances and a qualified lender needs to focus on how it responds to an applicant, rather than on what the applicant asks, in order to make the determination.

We propose to change the title of ''Application for a Loan or Loan Application'' in § 614.4440(d) to ''Loan Application'' in proposed § 617.7000.

5. Restructure [§§ 614.4440(i) and 614.4512(h) to Proposed § 617.7000]

We propose modifying the definition of restructure to recognize that not all restructurings will result in viability. For more discussion, see Part E.2. of this preamble.

6. Delete Reference to the Certified Lender and Special Asset Group [§ 614.4512(b)]

We propose deleting the definition of a certified lender in existing § 614.4512(b) and the reference to special asset group in § 614.4519(c) because the requirements for them are obsolete.

7. Redesignate Existing § 614.4512(c)—Cost of Foreclosure—to Proposed § 617.7415(b) [§ 617.7415(b)]

We propose redesignating the content of existing § 614.4512(c) to proposed § 617.7415(b) to locate the criteria for the cost of foreclosure near the rules on evaluating applications for restructuring.

B. May Qualified Lenders Use Electronic Communications to Comply with Borrower Rights? [§ 617.7005]

The FCC asked that we amend our existing rules to authorize electronic communications for borrower rights disclosures. As part of our initiative to implement the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, codified at 15 U.S.C. 7001 *et seq.* (E–SIGN) and our electronic commerce (E–commerce) rule,[9] we propose adding § 617.7005 to permit electronic communications as allowed for by law.

The preamble to the final E–commerce rule states that E–SIGN preempts (with some exceptions) provisions in most state or federal statutes or regulations, including the Act and its implementing regulations, which require contracts or other records to be written, signed, or to be in non-electronic form. With the parties' agreement, qualified lenders may now use E–commerce and electronic communications in many situations.

Qualified lenders should interpret this part broadly to allow electronic transmission, communications, records, and submissions, as provided by E–SIGN. Qualified lenders may interpret the terms used in this part to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited. E–SIGN does not, however, allow electronic communications for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an individual's primary residence secures the loan.[10] In these instances, a qualified lender must use the paper communications required by the Act and borrower rights regulations. E–SIGN also requires paper notification to cancel or terminate life insurance.

In addition to the primary residence provision, E–SIGN established different standards for business and consumers

[8] 12 CFR 202.2(f).

[9] 67 FR 16627 (April 7, 2002).

[10] This exception is found in section 103(b)(2)(B) of E–SIGN and 12 CFR 609.950(c).

using E–commerce. While both businesses and consumers must agree to E–commerce, E–SIGN provides certain protections and compulsory procedures when a statute or regulation, such as the Equal Credit Opportunity Act, requires that information be provided to a consumer. These same protections are not afforded to businesses. Under E–SIGN, ''consumer'' means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes. Some loans under E–SIGN qualify as consumer transactions, while others are business transactions. A qualified lender must distinguish between the two types of transactions to comply with E–SIGN.

We have summarized the pertinent consumer consent provisions below. For a complete list, please see the preamble to the proposed E–commerce rule.[11] You may also view the proposed rule and other E–commerce information under the ''Resources for the FCS'' section of our Web site at *http://www.fca.gov*.

- Consumer consent may apply to a particular transaction and/or category of records. Consumers may decide when they want electronic records and notices.
- Consumers who choose to receive documents electronically must show the technological capacity to do so prior to consenting to E–commerce. For example, to show technological capacity, the lender may ask the consumer to communicate with the lender by sending an e-mail to the lender through an Internet provider or by logging onto the lender's Internet Web site.

We direct qualified lenders to E–SIGN and part 609 of our regulations to determine how to apply E–commerce and use electronic communications. Qualified lenders should also consult legal counsel before engaging in E–commerce and using electronic communications.

C. May a Borrower Waive All or a Portion of the Borrower Rights? [§ 617.7010]

Questions about whether a borrower may waive the rights granted in the Act and FCA regulations have arisen since these laws were enacted. We have consistently taken the position that, as a general rule, an institution may not obtain a waiver of borrower rights. These rights have a public policy purpose and should only be waived in limited circumstances, such as when the parties are in a reasonably equal bargaining position or when other federal rights provide protections similar to borrower rights. We propose adding this position in proposed § 617.7010(a).

1. May a Borrower Who Has a Loan Guaranteed by the Small Business Administration (SBA) Waive Borrower Rights? [§ 617.7010(b)]

In FCA Bookletter BL–028, issued April 1, 1996, we permitted borrowers to waive certain borrower rights in connection with receiving a loan guarantee from the SBA. A borrower with an SBA guaranteed loan may waive the right of distressed loan restructuring, the right to appear before the credit review committee (CRC or committee), and the right of first refusal. We believe such a waiver is appropriate because the laws governing SBA guaranteed loans provide for servicing actions similar to the borrower rights provided in the Act. We propose incorporating this waiver in proposed § 617.7010(b)(1). Any waivers that are obtained pursuant to this regulation must be given voluntarily by the borrower and must be in writing. The qualified lender would be required to provide written explanation of the rights being waived by the borrower.

2. May a Borrower Waive Borrower Rights in Connection With a Subordinated Debt Transaction? [§ 617.7010(a)]

The FCC commented that a borrower should be able to waive borrower rights in subordinated debt transactions in the same manner as in loan sale transactions. We do not agree and are not proposing any regulatory changes. Subordinated debt transactions are direct loans made by a qualified lender. In these transactions, the lender is merely allowing another lender to have a priority lien on the collateral. The loan remains unchanged and borrower rights continue to apply.

3. How Does a Waiver Apply in a Loan Sale Transaction? [§ 617.7015(c)]

Existing § 614.4336(c) describes the procedures that a qualified lender must follow when selling a loan to a non-qualified lender. The qualified lender must either: (1) Include, with the borrower's consent, a provision in the original loan contract or modify it so that the purchasing lender will continue to provide the borrower rights granted by part C of title IV of the Act; or (2) obtain a waiver of borrower rights from the borrower. The FCC commented that we should allow, without borrower consent, the prospective buyer of a loan to execute an agreement with the qualified lender in which the buyer will provide all borrower rights that a qualified lender is obligated to provide. We do not propose adding this alternative. Under the Act, borrower rights belong to the borrower and may only be modified by the borrower. Absent a provision in the loan contract, non-qualified lenders are not obligated to provide borrower rights and we do not have enforcement authority over them.

The FCC alternatively asked if the buyer of a loan may directly obtain a waiver of borrower rights from the borrower, rather than requiring the qualified lender to obtain the waiver. We do not agree with this comment. Implementing all borrower rights provisions, including waivers, are the responsibility of the qualified lender. Therefore, we are proposing no changes to the waiver provisions of existing § 614.4336(c) and redesignating it as proposed § 617.7015(c).

D. What Is the Review Process for Adverse Credit Decisions? [§ 617.7300 et seq.]

Section 4.14 of the Act requires a qualified lender to establish a CRC to review adverse credit decisions made by the qualified lender on loan applications and denials of applications for restructuring.

1. Whom Should the Qualified Lender Notify? [§§ 617.7300, 617.7410(d), and 617.7420(b)]

Existing §§ 614.4441, 614.4516(a)(2), and 614.4518 allow a lender to notify one designated primary obligor or applicant in situations where there are multiple borrowers or applicants. The FCC recommended a single notice provision as a way of eliminating multiple notices and claims of a wrong party receiving notice. Although we recognize the efficiencies gained in sending disclosures to only one of the obligors, we also recognize the value of keeping all obligors informed. As a result, we propose in §§ 617.7300, 617.7410(d), and 617.7420(b) to require that qualified lenders notify all applicants or all parties listed on the promissory note as primarily obligated to repay the debt. The applicants or borrowers may designate one person to be the primary contact and the lender may then send the original notice to that person. However, the lender must send copies of the notice to the other applicants or borrowers.

[11] 66 FR 53348 (October 22, 2001).

2. When Should a Qualified Lender Notify a Borrower That the Application for Restructuring Has Been Denied and What Information May the Borrower Use in the CRC Review? [§ 617.7310(c)]

Confusion has arisen over the years as to when in the restructuring process the qualified lender must offer the right of CRC review. In addition, an FCS institution asked if a borrower may present the original application for restructuring to the CRC even if the original application was not the basis for the ultimate restructuring decision. In the preamble to § 614.4443,[12] we expressed the intent for the lender and borrower to engage in ''* * * a cooperative effort to attempt to find solutions before the CRC process began.'' We believe Congress expected borrowers and lender to negotiate applications for restructuring. The negotiations, which may include plan modifications, must reach a conclusion. Once negotiations are concluded and the lender denies the borrower's request, the borrower is then given the opportunity to appear before the CRC. The borrower may present the initial application for restructuring or any subsequent modifications that resulted in denial by the qualified lender.

We propose moving § 614.4443(b) to § 617.7310(c).

3. Who Serves on the CRC? [§ 617.7305]

Section 4.14(a) of the Act requires the membership of the CRC to include at least one farmer-member of the qualified lender's board of directors. In the preamble to the existing regulations,[13] we explained farmer board representation means a farmer, rancher, or producer or harvester of aquatic products. We are clarifying that farmer board representation also means an elected board member, as opposed to an appointed board member.

Section 4.14(a) of the Act also requires farmer board representation and prohibits the loan officer involved in the original credit decision from serving on the CRC. The Act does not prohibit delegations. However, existing § 614.4442 provides that the board member serving on the CRC may designate an alternate to serve on the committee as long as the alternate is also an elected farmer board member, but prohibits non-board members of the CRC from delegating committee duties. The FCC requested that the restriction prohibiting delegations be removed. We agree and propose removing the restriction in proposed § 617.7305. As long as the replacement members of the CRC are experienced and capable of rendering thoughtful and careful review of adverse credit decision, we believe the delegation restriction is unnecessary.

4. Must a Qualified Lender Notify an Applicant or Borrower of a CRC Meeting? [§ 617.7310(a)]

The existing rule at § 614.4443 does not require a qualified lender to notify an applicant or borrower of the CRC meeting date where the applicant or borrower's request for review will be discussed. Although we do not believe that this has been a problem in the past, we wish to correct this oversight. Proposed § 617.7310(a) requires a qualified lender to inform the applicant or borrower of the CRC meeting date at least 15 days in advance of when the request for review will be discussed.

5. What Information May Not Be Submitted to the CRC? [§ 617.7310(c)]

The FCC commented that the CRC is not a substitute for the normal credit process and the committee should not act on new information or negotiate a new proposal. The FCC requested that we emphasize that the CRC review is of the denied loan or restructuring request and is not an opportunity for the applicant or borrower to introduce new information. We believe the existing rule clearly indicates that the CRC function is one of review and the CRC meetings are not forums for new issues. Existing § 614.4443(b) allows an applicant or borrower to submit ''any documents or other evidence'' to the CRC that supports the application under review. The purpose of the review is to provide the opportunity for the applicant or borrower to demonstrate that the loan or restructuring request satisfies the credit standards of the qualified lender. The Act makes no provision for presenting a new application to the CRC.

We propose moving § 614.4443(b) to § 617.7310(c).

6. Who Has the Right to an Independent Collateral Evaluation? [§ 617.7310(d)]

A System institution and the FCC suggested that the right to an independent collateral evaluation only applies to those applicants or borrowers whose applications were denied because of insufficient real estate collateral. We disagree. The Act does not place conditions on the right to an independent collateral evaluation. Section 4.14(d) provides applicants and borrowers the right to have the CRC review independent collateral evaluations, whether or not insufficient collateral was the reason for the loan or restructure denial. However, we believe that if qualified lenders provide complete disclosure to the applicant or borrower of the reasons for the loan or restructure denial, unnecessary independent collateral evaluations will not occur.

We propose moving § 614.4443(c) to § 617.7310(d).

7. How Long Does an Applicant or Borrower Have To Obtain an Independent Collateral Evaluation? [§ 617.7310(d)(2)]

The FCC and one System institution suggested we establish a 60-day limit to seek an independent collateral evaluation. Section 4.14(d) of the Act provides that an applicant or borrower who receives an adverse credit decision may request an independent collateral evaluation in connection with an appeal to the CRC. Existing § 614.4443(c)(2) requires the collateral evaluation to be completed within a reasonable period of time. The Act does not provide a more definitive time limit for completing an independent evaluation, although the legislative history of section 4.14(d)(2) of the Act indicates that Congress was concerned with potential delays in this process. We do not believe a regulatory time limit to obtain an independent evaluation is appropriate. We recognize that in some cases the applicant or borrower legitimately may need longer than the 60-day limit recommended by the commenters, particularly if there are no authorized independent evaluators in the local area. We have instead proposed in § 617.7310(d)(2) a 30-day limit for applicants or borrowers to enter into a contract for evaluation services. We believe this time limit will help ensure that the review process is not unnecessarily delayed.

As a result of this change, we propose removing that portion of existing § 614.4443(c)(3) stating ''* * * provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 days prior to any scheduled meeting of the credit review committee.'' We originally adopted this requirement to assist a qualified lender in the situation where a borrower is attempting to delay the CRC review process. In re-evaluating our entire borrower rights regulations, however, we believe the better approach is to require the borrower to contract with an independent evaluator within 30 days. By removing this portion of the existing rule, we do not intend an applicant or borrower to delay submitting an independent collateral evaluation to the qualified lender. An applicant or borrower should make every effort to provide the independent

[12] *Id.* at note 4.

[13] *Id.* at note 4.

evaluation well in advance of the CRC meeting to ensure it is given full consideration. Although ultimately, the CRC must consider any independent collateral evaluation obtained, pursuant to section 4.14(d)(2) of the Act.

8. What Copies of Independent Collateral Evaluations Must a Qualified Lender Provide an Applicant or Borrower? [§ 617.7310(c)]

The FCC suggested that a borrower's right to receive a copy of the independent collateral evaluations used in a credit decision should be limited to the most recent independent collateral evaluation. We disagree. Section 4.14(d)(3) of the Act states that a borrower may obtain a copy of *each* independent collateral evaluation made and we reiterate this provision in proposed § 617.7310(c).

9. How Long May the CRC Take To Reach a Decision? [§ 617.7310(e)]

Existing § 614.4443(d) does not provide any time limit for the CRC to reach a decision. We propose in § 617.7310(e) a time limit of no more than 30 days for the CRC to reach a decision. Decisions should be made as expeditiously as possible to prevent undue delay and increased costs to the qualified lender and applicant or borrower. We believe this time limit will ensure an expedited decision-making process.

10. What Records Must the CRC Maintain? [§ 617.7315]

Existing § 614.4444 requires the CRC to maintain records of a request for review, the meeting minutes, and the decision of the committee. We believe the second sentence in the section that refers to keeping records for FCA review is redundant and therefore, we propose its deletion in § 617.7315.

E. What Are the Distressed Loan Restructuring Notice Options? [§ 617.7410]

1. What Notices May a Qualified Lender Send to a Distressed Borrower? [§ 617.7410(a) and (b)]

Once a qualified lender determines a loan is distressed, the lender must notify the borrower that: (1) The loan is distressed; (2) the borrower has the right to request a restructure of the loan and what to include in the application for restructuring; and (3) an alternative to restructure may be foreclosure. In 1993, we clarified that qualified lenders had the option of sending two distinctly different notices.[14] One notice, the ''non-foreclosure notice,'' would include items (1) and (2) above, while the other notice, the ''45-day notice,'' would include all three items. A qualified lender may send the non-foreclosure notice when it is not considering foreclosure. The 45-day notice must be sent when foreclosure is a consideration. To initiate foreclosure, the qualified lender must have sent the 45-day notice.

A System institution commented that the 45-day notice requirement does not provide enough time for a qualified lender to consider an application for restructuring and to make a sound decision. We believe the commenter has misinterpreted the 45-day requirement. There is no requirement that a qualified lender complete a restructuring or make a restructuring decision in 45 days. The qualified lender should take the time necessary to thoroughly consider the application and work with the borrower.

We are consolidating the notice requirements in §§ 614.4516(a) and 614.4519(a) into proposed § 617.7410(a) and (b).

2. What Is the Purpose of Each Notice? [§ 617.7410(a) and (b)]

The non-foreclosure notice informs the borrower that a loan is distressed and may be suitable for restructuring. The 45-day notice puts the borrower on notice that if a loan is not restructured, the qualified lender may initiate foreclosure.

The FCC commented that the lender should not have to send another notice if the borrower defaults within 12 months of the original notice. As we understand the comment, the FCC is concerned about sending more than one distressed loan notice before the qualified lender can begin foreclosure proceedings. In response, we clarify that a qualified lender need only send a second notice if the initial notice did not mention that the alternative to restructuring may be foreclosure. If the qualified lender sends the 45-day notice and the borrower does not apply, or is not granted, a restructuring, the lender may proceed with foreclosure. However, we expect lenders to comply with the spirit of borrower rights and have ongoing communications with the borrower so that a foreclosure proceeding is not a surprise.

3. What Notice Should Be Sent to a Borrower Who Is a Debtor in a Bankruptcy Proceeding? [§ 617.7410(c) and (d)]

Section 4.14A(b) of the Act requires a qualified lender to notify a borrower that a loan may be suitable for restructuring. If the borrower is in bankruptcy, the required notice may be construed as a demand for payment, which is prohibited by the automatic stay provision of the Bankruptcy Code. We are proposing in § 617.7410(c) and (d) to change the notice requirements in existing §§ 614.4516(a) and 614.4519(a). A qualified lender should use alternative language for a borrower who is a debtor in a bankruptcy proceeding by restating language from the automatic stay provision. The qualified lender should send the notice to the borrower's counsel.

4. What Notices Are Required if a Borrower's Loan Becomes Distressed Following a Restructuring? [§ 617.7410(e)]

The Act is silent on what notices are required when a borrower's loan is restructured, but the loan remains, or again becomes, distressed. The FCC and several System institutions requested that we provide additional regulatory guidance on how many times a qualified lender must provide a distressed loan restructuring notice to a borrower who has defaulted on a previously restructured loan. The comments varied from requesting limits on the number of times a loan could be restructured to giving a distressed borrower only one opportunity to restructure the loan in a calendar year or operating cycle.

We agree that additional guidance appropriate to assist a qualified lender in determining when another distressed loan notice must be sent after the loan has been restructured. We considered what distinguishing event would differentiate whether another restructuring opportunity should be offered. We believe that a borrower's performance under the current restructuring agreement is key in a qualified lender's determination of whether the restructure cured the reason(s) the loan was originally distressed. We propose in § 617.7410(e) to define performance as 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments, depending on the payment scheduled in the current restructuring agreement. For purposes of judging performance, the borrower may be considered in default if payment is not received within 30 days of the date the payment is due. We reasoned that if the borrower is not able to perform under the restructured loan agreement, the loan remains distressed and the qualified lender may proceed directly to foreclosure without further notice, provided the qualified lender sent the 45-day notice to the borrower. If, however, the borrower performs under the restructure agreement, the reason for

[14] 58 FR 62513 (November 29, 1993).

the original distress is cured. Any subsequent problem with the loan that causes the loan to meet the definition of a distressed loan requires the qualified lender to provide the borrower with a new distressed loan notice and opportunity to restructure, regardless of the number of times the loan was previously restructured.

The current notice requirement in existing § 614.4519(a) provides only two options, restructure or possible foreclosure. We propose in § 617.7425(b) to modify the 45-day notice to ensure that borrowers are informed that if they do not perform under the restructure, the qualified lender could proceed with foreclosure without further notification.

5. May a Qualified Lender Propose Restructuring if the Borrower Did Not Submit an Application? [§ 617.7410(g)]

It is the borrower's responsibility to respond to the distressed loan notice by submitting an application for restructuring. Section 4.14A(d)(2) of the Act provides that nothing shall prevent a qualified lender from proposing an application for restructuring for an individual borrower in the absence of an application for restructuring from the borrower. We reaffirm that the qualified lender may submit a restructuring proposal for consideration if the borrower fails to do so. We believe that Congress provided this option as a means of ensuring that all borrowers are considered for a loan restructuring regardless of whether the borrower provides an application for restructuring.

We are proposing to move § 614.4516(c) into § 617.7410(g).

What Is a Qualified Lender's Process When Determining Whether to Restructure or Foreclosure? [§ 617.7415]

Section 4.14A(e) of the Act and existing §§ 614.4517(a) and 614.4512(c) provide that certain factors should be taken into consideration when a qualified lender determines whether the cost of restructuring is equal to or less than the cost of foreclosure. The FCC commented that in calculating the cost of restructuring, a borrower's ability to perform under a restructuring plan is an integral, but not necessarily calculable, part of the analysis. The FCC went on to state that unrealistic borrower projections make calculating the cost of restructuring difficult, particularly when the regulations do not permit much analysis or questioning of the financial inputs provided by the borrower. We agree and propose in § 617.7415 regulatory amendments identified below to address the responsibilities of both the borrower and the qualified lender in developing the restructuring plan.

1. What Is the Process for Considering the Restructuring Application? [§ 617.7415(c)]

To develop the application for restructuring, the qualified lender and borrower should work together to determine the most realistic financial inputs. These inputs are the backbone of the application for restructuring. Because the Act requires a qualified lender to restructure the loan if the cost of restructuring is equal to or less than the cost to foreclose, it is imperative that the lender work with the most reliable inputs to determine the cost of restructuring. As such, we propose in § 617.7415(c) that when developing and negotiating the application for restructuring, the qualified lender may use benchmarks to determine the financial input costs and chattel security values if the borrower and lender are unable to reach agreement. Benchmarks may include the borrower's 5-year production average, averages in the county where the farming operation is located, or other such support. We expect the qualified lender and borrower to engage in good faith negotiations with the intended purpose of determining reasonable financial input costs for the borrower's operation. It is only when the borrower and lender are unable to agree on reasonable financial input values that the lender should look to benchmarks.

2. What Criteria Does the Qualified Lender Use When Determining Whether To Restructure or Foreclose? [§ 617.7415]

Through our examination process and review of borrower complaints, questions have arisen about how qualified lenders apply the criteria in section 4.14A(d) and (e) of the Act. Specifically, many qualified lenders apply the criteria in paragraph (d) that the borrower must return to viability, as the controlling criterion. As a result, an application for restructuring may have been denied when the cost of restructuring was less than the cost of foreclosure. Although we believe a rule change is unnecessary, we are clarifying in § 617.7415(d) that section 4.14A(e) of the Act specifically requires the qualified lender to restructure the loan if the cost of restructuring is less than or equal to the cost of foreclosure.

This approach gives full meaning to section 4.14A and allows consideration of all relevant factors in evaluating a restructuring. We recognize this interpretation may result in approval of an application for restructuring because it is the least cost option but unlikely to ultimately reestablish viability.

3. May a Qualified Lender Include the Borrower's Performance Under a Previous Restructuring When Determining the Cost of Restructuring the Loan Again? [§ 671.7415(a)]

Section 4.14A(d)(1) of the Act provides criteria to consider when the qualified lender determines whether or not to restructure a loan. One of the criteria is the borrower's ability to work out of the existing financial difficulties. The Act balances Congress's desire for the System to assist borrowers and not cause financial harm to the qualified lender. The qualified lender should carefully consider the reasons why a prior restructuring was not successful when it analyzes whether a subsequent restructuring would make it probable that the borrower will become financially viable. If the qualified lender determines that deficient management by the borrower contributed to the current problem, then this deficiency should weigh heavily in the qualified lender's evaluation of the future viability of the borrower's operation. However, if the borrower's inability to perform under a prior restructuring was the result of a natural disaster, for example, and not management deficiencies, the qualified lender should take this into consideration when determining the likelihood that a new restructuring would be successful.

Although it is permissible for the qualified lender to analyze and quantify why prior restructuring efforts were not successful, the qualified lender is not permitted to include the costs of prior restructuring efforts in the cost of subsequent restructure requests.

4. What Type of Foreclosure Action Should Be Used in Calculating the Cost of Foreclosure? [§ 617.7415(b)]

The FCC commented that we should specify whether the cost of foreclosure should be calculated based on a contested or uncontested foreclosure proceeding. We do not agree that we need to add this level of specificity. The cost of foreclosure varies on a case-by-case basis and, when calculating the cost of foreclosure, qualified lenders should have the flexibility to adjust the costs according to each situation.

G. How Would a Decision on an Application for Restructuring Be Issued? [§§ 617.7420 to 617.7425]

1. When Must a Decision on an Application of Restructuring Be Issued? [§ 617.7420(a)]

Existing § 614.4518 requires a qualified lender to issue a restructuring decision in an expeditious manner. We believe a specific timeframe is necessary and propose in § 617.7420(a) that restructuring decisions be issued within 15 days from the conclusion of negotiations between the qualified lender and borrower on the application for restructuring.

2. What Should the Notice Include When the Restructuring Request Is Denied? [§ 617.7420(c)]

Section 4.13B(b) of the Act requires qualified lenders to send written notice of actions taken to restructure distressed loans. The Act requires the notice to include the reasons for any denial of restructuring and to inform the borrower of the right to have the decision reviewed. Existing § 614.4518 explains that the notice denying restructuring must include the critical assumptions and relevant information behind the decision. Although we do not propose in § 617.7420(c) to amend existing § 614.4518, we wish to provide clarification.

We expect the notice to contain sufficient information for the borrower to understand the exact reasons for the denial, so that the borrower can decide whether or not to request a review of the decision. This includes providing every reason for a denial, not just one. For example, when a lender denies a restructuring application based on financial and managerial weaknesses, and inadequate collateral, all of these reasons should be provided in the notice. Otherwise, the qualified lender is depriving the borrower of the opportunity to know the full reason for the denial.

H. How Are Borrower Rights Applied for Chronically Delinquent Borrowers? [§ 617.7425]

Section 4.14D(c) prohibits a qualified lender from enforcing acceleration of the borrower's repayment schedule because the borrower did not timely make one or more principal or interest payments. This prohibition has resulted in some borrowers abusing the process by repeatedly defaulting on loans and paying the amounts due at the last minute to avoid foreclosure. We refer to borrowers who repeatedly default as chronically delinquent. Two institutions requested that we modify our rules to address chronically delinquent borrowers. Another suggested that our rules not require a qualified lender to send out distressed loan notices every time a chronically delinquent borrower defaults before foreclosure proceedings are commenced, so long as borrowers are given an opportunity to seek restructuring once during a year or operating cycle. Finally, a fourth System institution requested we revise the rules so that borrowers cannot abuse borrower rights protections with repeated delinquencies after bringing accounts current.

We do not propose in § 617.7425 to change existing § 614.4514 in this area. The Act requires notice to be sent to a borrower 45 days or more before foreclosure proceedings begin. No exceptions are provided in the Act for borrowers who are chronically delinquent or are believed to have the funds to pay on time. A qualified lender is required to send a notice each time a borrower's loan is identified as distressed, notwithstanding previous restructuring opportunities, as long as the borrower had been current before that payment was due.[15]

I. When May a Qualified Lender Foreclose on a Loan Without Providing Borrower Rights? [§ 617.7425(a)]

Section 4.14A(j) of the Act provides that a qualified lender may foreclose on a loan if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the state in which the collateral is located. Some institutions are concerned that restructuring notices must be given prior to starting foreclosure proceedings initiated due to a threat to collateral. If a qualified lender believes that collateral is at risk of being destroyed, the qualified lender may proceed with foreclosure without providing a restructuring notice to the borrower. The lender should, however, carefully document the reasons the collateral is at risk.

We propose moving the language on this issue in existing § 614.4519(b) to § 617.7425(c).

J. May Borrower Rights Be Waived When Using State Mediation Programs? [§ 617.7430]

The FCC commented that we should consider authorizing a waiver of borrower rights when the borrower pursues available state mediation rights (including mandatory mediation situations). The FCC commented that many borrowers elect to pursue state mediation over borrower rights, and those borrowers should be able to elect mediation over borrower rights through a waiver. The Act clearly provides for federal borrower rights and the borrower's right to pursue state mediation. We are proposing no substantive changes to existing § 614.4521. We propose to redesignate it at § 617.7430 and reword it slightly to emphasize that state mediation may proceed concurrently with borrower rights.

K. Are Borrower Rights Set Aside as a Result of Arbitration?

The FCC commented that if the lender and the borrower agree to arbitration, the arbitrator should be free to reach a final decision that negates borrower rights. We encourage qualified lenders and borrowers to consider alternative methods for settling disputes, such as arbitration. However, we do not believe that borrower rights may be set aside as a result of the arbitration process. We believe that Congress could have chosen arbitration as the means for resolving disputes between borrowers and lenders. Because Congress instead adopted a very specific process for dealings between borrowers and lenders in a distressed loan situation, we do not believe it is appropriate for the arbitration process to take the place of borrower rights or for an arbitrator to have the authority to make a binding decision that contravenes the Act and regulations.

L. What Is a Borrower Rights Directive? [§ 617.7500 et seq.]

Section 4.14A(i) of the Act authorizes us to enforce compliance with section 4.14A of the Act by issuing a borrower rights directive. Directives provide another supervisory tool to us to take action when an institution violates the law. Violations of a directive may result in civil money penalties or a court order enforcing the directive. We are proposing in part 617, subpart F, regulatory procedures to issue directives to ensure that a qualified lender fully complies with the terms of section 4.14A of the Act.

These procedures are similar to our existing capital directive regulations found in part 615, subpart M. The procedures require notice to the qualified lender of the specific noncompliance, providing a 30-day period for the qualified lender to respond to the notice, evaluation of the qualified lender's response, and finally a decision on whether or not to issue the directive as proposed or modified.

[15] See the discussion in section E.4. of this preamble to determine when a previously restructured loan is current.

M. How Is the Right of First Refusal Applied? [§ 617.7600 et seq.]

Section 4.36 of the Act provides a previous owner the right of first refusal to repurchase property when a System institution forecloses or a borrower voluntarily conveys agricultural real estate because the borrower did not have the financial resources to avoid foreclosure.

1. Does the Right of First Refusal Apply When the System Institution Acquires Agricultural Real Estate Through a Bankruptcy Liquidation? [§ 617.7600]

The right of first refusal does apply to agricultural real estate acquired through a bankruptcy proceeding. When a System institution gets relief from the automatic stay, or the borrower conveys the property as part of a bankruptcy plan, the right of first refusal applies because the System institution gains possession of the property through foreclosure or voluntary conveyance.

2. Who Is the Previous Owner? [§ 617.7600]

Existing § 614.4522(a)(2) defines a previous owner as a prior record holder who was a borrower or whose land was used as collateral for a loan to a System borrower. The FCC commented that we should clarify that a previous owner does not include a mortgagor or grantor of an equivalent interest in agricultural real estate unless such person is also the borrower. As previously stated, the term refers to the legal title holder of the agricultural real estate used as collateral for the loan. The right of first refusal is not transferable and belongs only to the legal title holder. We invite the FCC to comment further if we have not adequately responded to the comment.

3. May the Previous Owner Waive the Right of First Refusal as a Part of a Debt Settlement?

Borrower rights, which include the right of first refusal, were enacted by Congress to address an unequal bargaining position that exists between a borrower and a qualified lender. In most debt settlement situations, the borrower is in an unequal bargaining position. Thus, permitting waivers for this borrower would contradict Congress's intent.

4. Must a System Institution Document Whether the Previous Owner Had the Financial Resources To Avoid Foreclosure or Voluntary Conveyance? [§ 617.7605]

Whether the borrower had the financial resources to avoid either foreclosure or voluntarily conveying the agricultural real estate is a condition in the Act that must be met before the right of first refusal may be offered. We continue to require each System institution to document whether the borrower did or did not have the financial resources to avoid foreclosure or voluntary conveyance.

We propose moving existing § 615.4522(b) to § 617.7605.

5. May a System Institution Require a Previous Owner To Pay an Escrow Deposit When Buying the Property at a Public Auction? [§ 617.7620]

If an escrow deposit is an advertised requirement of the successful bidder in a public auction, then the previous owner, as the successful bidder, must also provide this escrow payment. The previous owner must be given an equal opportunity to repurchase the property in a public auction and should be subject to the same conditions as any other successful bidder.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government Securities, Investments, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 609, 614, 615, and 617, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 609—ELECTRONIC COMMERCE

1. The authority citation for part 609 continues to read as follows:

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub L. 106–229 (114 Stat. 464).

Subpart A—General Rules

2. Amend § 609.910(c) by revising the fourth sentence to read as follows:

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106–229) (E–SIGN).

* * * * *

(c) * * * Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 617, subparts A, D, E, and G of this chapter. * * *

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§ 614.4336 [Removed]

4. Remove § 614.4336.

Subpart L—Actions on Applications; Review Credit Decisions

Subpart L [Removed]

5. Remove subpart L, consisting of §§ 614.4440 through 614.4444.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§§ 614.4514–614.4522 [Removed]

6. Remove §§ 614.4514 through 614.4522 in subpart N.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart J—Retirement of Equities

8. Section 615.5280(h) is revised to read as follows:

§ 615.5280 Retirement in event of default.

* * * * *

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 617.7405, 614.7410, 617.7420, and 617.7425 of this chapter that contain the information required by this section.

9. Amend § 615.5290 by revising paragraphs (a) and (b) to read as follows:

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

* * * * *

PART 617—BORROWER RIGHTS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

11. Amend § 617.7000 by adding the following definitions alphabetically to read as follows:

§ 617.7000 Definitions.

* * * * *

Adverse credit decision means a credit decision where a qualified lender:

(1) Decides not to make a loan to an applicant;

(2) Makes a loan in an amount less than the applicant requested; or

(3) Denies an application for restructuring.

Applicant means any person who completes and executes a loan application from a qualified lender.

Application for restructuring means a written request from a borrower to restructure a distressed loan. The request must be:

(1) Submitted on the appropriate forms prescribed by the qualified lender and accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision; or

(2) A borrower's bankruptcy plan of reorganization.

Distressed loan means a loan that the borrower does not have the financial capacity to pay according to its terms, as determined by the qualified lender, and exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends.

(2) The loan is delinquent or past due under the terms of the loan contract.

(3) One or both of the factors listed in paragraphs (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the qualified lender.

* * * * *

Foreclosure proceeding means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a noninterest-earning asset or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I and II of the Act, to effect collection of a nonaccrual or distressed loan.

Independent evaluator means an individual who is a qualified evaluator and who satisfies the standards of § 614.4260, subpart F of this chapter, and the standards set by the qualified lender for the type of property to be evaluated. The independent evaluator may not be an employee or agent of a qualified lender or have a relationship with the lender or any of its officers or directors in contravention of part 612 of this chapter.

* * * * *

Loan application means a complete oral or written request for an extension of credit made in accordance with a qualified lender's procedures for the type of credit requested. An application is complete when the qualified lender receives all the information normally obtained and used in evaluating applications for credit. This information may include credit reports, supporting information for the credit requested, and reports by governmental agencies or other persons necessary to guarantee, insure, or provide security for the credit or collateral.

* * * * *

Restructure and restructuring of a loan means a reamortization, renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forebear on, a loan in any way that will provide the best opportunity for the borrower to have a reasonable probability of retiring debts and returning to a viable operation.

* * * * *

12. Amend subpart A by adding new §§ 617.7005, 617.7010, and 617.7015 to read as follows:

§ 617.7005 When may electronic communications be used in the borrower rights process?

Qualified lenders may use, with the parties' agreement, electronic commerce (E-commerce) including electronic communications for borrower rights disclosures. Part 609 of this chapter addresses when a qualified lender may use E-commerce. Consistent with these rules, a qualified lender should interpret part 617 broadly to allow electronic transmissions, communications, records, and submissions. However, electronic communications may not be used for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an applicant's or borrower's primary residence secures the loan. In these instances, a qualified lender must use paper disclosures.

§ 617.7010 May borrower rights be waived?

(a) A qualified lender may not obtain a waiver of borrower rights, except as indicated in paragraph (b) of this section.

(b) A borrower may waive the following rights:

(1) Rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration.

(2) In connection with a loan sale as provided in § 617.7015.

(c) All waivers must be voluntary and in writing. The qualified lender must first clearly explain the rights the borrower is being asked to waive and provide a written explanation of such rights.

§ 617.7015 What happens to borrower rights when a loan is sold?

(a) A loan made by a qualified lender and subsequently sold, in whole or in part, to another qualified lender is subject to the borrower rights provisions of title IV of the Act.

(b) What happens when a qualified lender sells a loan into the secondary market?

(1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, and designated for sale into a secondary market at the time the loan was made.

(2) Borrower rights apply to a loan designated for sale under paragraph (b)(1) of this section but not sold into a secondary market during the 180-day period that begins on the date of designation. The provisions of paragraph (b)(1) of this section will subsequently apply on the date of sale if the loan is later sold into a secondary market.

(c) What happens when a qualified lender sells a loan to a non-qualified lender?

(1) Except for loans sold to another qualified lender or designated for sale into a secondary market, a qualified lender must comply with one of the following requirements before selling a loan or interest in a loan subject to borrower rights:

(i) The qualified lender and borrower must agree to include provisions in the loan contract with the borrower, or a written modification thereto, that ensure that the buyer of the loan will be obligated to provide the borrower the same rights a qualified lender must provide; or

(ii) The qualified lender must obtain from the borrower a signed written consent to the sale, which clearly states the borrower waives statutory borrower rights.

(2) Before the qualified lender obtains the borrower's consent to the sale of the loan and the waiver of borrower rights under paragraph (c)(1)(ii) of this section, the qualified lender must disclose in writing to the borrower:

(i) A complete description of the statutory rights the borrower will waive;

(ii) Any changes in the loan terms or conditions that will occur if the qualified lender does not sell the loan;

(iii) That waiving borrower rights will not become effective unless the qualified lender sells the loan; and

(iv) That borrower rights will become effective again if any qualified lender repurchases the loan or any interest in the loan.

(3) The consent to the loan sale and waiver of borrower rights shall have no effect until the qualified lender sells the loan. Borrower rights become effective again if any qualified lender repurchases the loan or any interest in the loan.

(4) A qualified lender may not make a loan conditioned on the borrower consenting to the loan's sale and a waiver of borrower rights.

13. Amend part 617 by adding new subparts D, E, F, and G to read as follows:

Subpart D—Actions on Applications; Review of Credit Decisions

Sec.

Subpart D—Actions on Applications; Review of Credit Decisions

§ 617.7300 When acting on a loan application, what are the notice requirements and review rights?

Each qualified lender must make its decision on a loan application as quickly as possible. The qualified lender must provide prompt written notice of its decision to the applicant. The qualified lender is required to notify all primary applicants. If a loan application has more than one primary applicant, the qualified lender may send the original notice to the applicant designated to receive notices and may send copies to all other applicants. If the qualified lender makes an adverse credit decision on a loan application, the notice must include:

(a) The specific reasons for the qualified lender's decision;

(b) A statement that the applicant may request a review of the decision;

(c) A statement that a written request for review must be made within 30 days after the applicant receives the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the independent collateral evaluation review process, whom to contact for access to information, and the applicant's right to appear in person before the credit review committee (CRC).

§ 617.7305 What is a CRC and who are the members?

The board of directors of each qualified lender must establish one or more CRCs to review adverse credit decisions made by a qualified lender. The CRC may only review adverse credit decisions at the request of the applicant or borrower. The CRC has the ultimate decision making authority on the loan or application under review. CRC members are selected by the board of directors of each qualified lender and must include at least one of the qualified lender's farmer-elected board members. The loan officer involved in the adverse credit decision being reviewed may not serve on the CRC when it reviews that loan.

§ 617.7310 What is the review process of the CRC?

(a) *How will an applicant or borrower know when the CRC will consider the review request?* The qualified lender must inform the applicant or borrower 15 days in advance of the CRC meeting where the applicant or borrower's request will be reviewed.

(b) *Who may make a personal appearance before the CRC?* Each applicant or borrower who has requested a review may appear in person before the CRC. The applicant or borrower may be accompanied by counsel or other representative when seeking a reversal of a decision on a loan or an application for restructuring.

(c) *What documents may the CRC consider?* An applicant or borrower may submit any documents or other evidence to support the information contained in the loan or application for restructuring. The documents should demonstrate that the application for a loan or restructuring satisfies the credit standards of the qualified lender and is an eligible loan or application for restructuring. Additionally, the applicant or borrower is entitled to a copy of each independent collateral evaluation used by the qualified lender.

(d) *May an applicant obtain a new collateral evaluation even if collateral was not a reason for the adverse credit decision?* As part of a CRC review, an applicant may request an independent collateral evaluation of the agricultural real estate securing the loan or being offered as security, regardless of

whether collateral was an identified reason for the adverse credit decision. The independent collateral evaluation may be for any interest(s) in the property securing the loan, except stock or participation certificates issued by the qualified lender and held by the applicant or borrower.

(1) *Who may conduct an independent collateral evaluation?* The independent collateral evaluation must be conducted by an independent evaluator. The CRC must provide the applicant or borrower with a list of three independent evaluators approved by the qualified lender within 30 days of the request for an independent collateral evaluation. The applicant or borrower must select and engage the services of an evaluator from the list. The evaluation must comply with the collateral evaluation requirements of part 614, subpart F, of this chapter. The qualified lender must provide the applicant or borrower a copy of part 614, subpart F, for presentation to the selected independent evaluator. A copy of part 614, subpart F, signed by the evaluator is a required exhibit in the subsequent evaluation report.

(2) *When must an applicant or borrower obtain the independent collateral evaluation and who pays for the evaluation?* The applicant or borrower must enter into a contractual arrangement for evaluation services within 30 days of receiving the names of three approved independent evaluators. The evaluation must be completed within a reasonable period of time, taking into consideration any extenuating circumstance. The applicant or borrower must pay for the independent evaluation.

(3) *How does the CRC use an independent collateral evaluation when making a decision?* The CRC will consider the results of any independent collateral evaluation before making a final determination with respect to the loan or restructuring, except the CRC is not required to consider a collateral evaluation that does not conform to the collateral evaluation standards described in section 614, subpart F, of this chapter.

(e) *When must the CRC issue a decision?* The CRC shall reach a decision, and it shall be the final decision of the qualified lender, not later than 30 days after the meeting on the request under review. The CRC must make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. After making its decision, the committee must promptly notify the applicant or borrower in 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 committee.

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

Sec.

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 a written agreement.

(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 or interest payments.

(d) If a qualified lender places a loan in noninterest-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 or interest payment 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) 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 restructure of the loan (non-foreclosure notice).

(2) A notice that the loan has been identified as distressed, that the borrower has the right to request a restructure 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 restructuring 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 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'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 should notify a borrower of the right to file another application to restructure the loan only if the borrower has performed on the previous restructure agreement. Performance means by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments. Notice is also required when the borrower has not performed and the qualified lender did not initially send the borrower the 45-day notice.

(f) *Does the borrower have the opportunity to meet with the qualified lender after sending 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 noninterest-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 one?* 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 cashflow 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, re-establishing 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 noninterest-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 inputs used in the application for restructuring?* If the borrower and lender are not able to agree on supportable or realistic financial inputs, 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 offices, 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 reason(s) for the denial and any critical assumptions and relevant information on which the 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, pursuant to § 617.7310 of this part, accompanied by counsel or any other representative, if the borrower so chooses.

§ 617.7425 What type of notice should be given to a borrower before foreclosure?

Not later than 45 days before any qualified lender begins foreclosure proceedings, the qualified lender must notify the borrower in writing that the loan may be suitable for restructuring. The notice must inform the borrower that the qualified lender will review any suitable loan for possible restructuring and must include a copy of the policy and the materials described in § 617.7410(b). The notice must also state that if the loan is restructured, the borrower must perform under this restructured loan agreement. If the borrower does not perform, the qualified lender may initiate foreclosure.

(a) *Does the notice have to inform the borrower that foreclosure is possible?* The notice must inform the borrower that the alternative to restructuring may be foreclosure. If the notice does not inform the borrower of potential foreclosure, then the qualified lender must send a second notice at least 45 days before foreclosure is initiated.

(b) *How are borrowers who are debtors in a bankruptcy proceeding notified?* A qualified lender must restate the language from the automatic stay provision to emphasize that the notice is not intended to be an attempt to collect, assess, or recover a claim. The qualified lender should send the notice to the borrower's counsel.

(c) *May a qualified lender foreclose on a loan when there is a restructuring application on file?* No qualified lender may foreclose or continue any foreclosure proceeding with respect to a distressed loan before the lender has completed consideration of any pending application for restructuring and CRC consideration, if applicable. This section does not prevent a lender from taking any action necessary to avoid the dissipation of assets or the destruction, diversion, or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion, or deterioration may occur.

§ 617.7430 Are institutions required to participate in state agricultural loan mediation programs?

(a) If initiated by a borrower, System institutions must participate in state mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions must cooperate in good faith with requests for information or analysis of information made in the course of mediation under any loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any state.

(d) A state mediation may proceed at the same time as the loan restructuring process of § 617.7415 or at any other appropriate time.

Subpart F—Distressed Loan Restructuring Directive

Sec.

Subpart F—Distressed Loan Restructuring Directive

§ 617.7500 What is a directive used for and what may it require?

(a) A distressed loan restructuring directive is an order issued to a qualified lender when FCA has determined that the lender has violated section 4.14A of the Act.

(b) A distressed loan restructuring directive requires the qualified lender to comply with the specific distressed loan restructuring requirements in the Act.

(c) A distressed loan restructuring directive is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order that has become final. Any violation of a distressed loan restructuring directive may result in FCA assessing civil money penalties or seeking a court order pursuant to section 5.31 or 5.32 of the Act.

§ 617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?

When FCA intends to issue a distressed loan restructuring directive, it will notify the qualified lender in writing. The notice will state:

(a) The reasons FCA intends to issue a distressed loan restructuring directive;

(b) The proposed contents of the distressed loan restructuring directive; and

(c) Any other relevant information.

§ 617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?

(a) A qualified lender should respond to the notice by stating why FCA should not issue a distressed loan restructuring directive, by proposing changes to the directive, or by seeking other suitable relief. The response must include any information, documentation, or other relevant evidence that supports the qualified lender's position. The response may include a plan for achieving compliance with the distressed loan restructuring requirements of the Act. The response must be in writing and delivered to FCA within 30 days after the date on which the qualified lender received the notice. In its discretion, FCA may extend the time period for good cause. FCA may shorten the 30-day period with the consent of the qualified lender or when FCA determines that providing the full 30 days would result in a borrower not receiving distressed loan restructuring rights.

(b) If the qualified lender fails to respond within 30 days or such other time period specified by FCA, this failure shall constitute a waiver of any objections to the proposed distressed loan restructuring directive.

§ 617.7515 How does the FCA decide whether to issue a directive?

After the closing date of the qualified lender's response period, or following receipt of the qualified lender's response, FCA must decide if there is sufficient information to support the issuance of a directive or if additional information is necessary. Once FCA has received sufficient information, it must decide whether to issue a directive as originally proposed or as modified.

§ 617.7520 How does the FCA issue a directive and when will it be effective?

A distressed loan restructuring directive is effective immediately on receipt by the qualified lender, or on such later date as may be specified by FCA, and shall remain effective and enforceable until it is stayed, modified, or terminated by FCA.

§ 617.7525 May FCA use other enforcement actions?

FCA may issue a distressed loan restructuring directive in addition to, or instead of, any other action allowed by law, including cease and desist proceedings, civil money penalties, or the granting or conditioning of any application or other requests by the System institution.

Subpart G—Right of First Refusal

Sec.

Subpart G—Right of First Refusal

§ 617.7600 What are the definitions used in this subpart?

In addition to the definitions in § 617.7000, the following definitions apply to this subpart.

Acquired agricultural real estate or property means agricultural real estate acquired by a System institution as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure.

Previous owner means:

(1) The prior record owner who was a borrower from a System institution and did not have the financial resources, as determined by the institution, to avoid foreclosure on acquired agricultural real estate; or

(2) The prior record owner who is not a borrower and whose acquired agricultural real estate was used as collateral for a loan to a System borrower.

System institution means a System institution, except a bank for cooperatives, that makes loans as defined in § 617.7000.

§ 617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?

The right of first refusal applies only to borrowers who did not have the financial resources to avoid foreclosure or voluntary conveyance. A System institution must clearly document in its files whether the borrower had the resources to avoid foreclosure or voluntary conveyance.

§ 617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?

(a) Notify the previous owner,

(1) By certified mail and within 15 days of the System institution's decision to sell acquired agricultural real estate, the institution must notify the previous owner, of the property's appraised fair market value as established by an accredited appraiser and of the previous owner's right to:

(i) Buy the property at the appraised fair market value, or

(ii) Offer to buy the property at a price less than the appraised value.

(2) That any offer must be received within 30 days of receipt of the notice.

(b) Act on an offer to buy the acquired agricultural real estate at the appraised value. Within 15 days after the receipt of the previous owner's offer to buy the acquired agricultural real estate at the appraised value, the System institution must accept the offer and sell the property to the previous owner, if the offer was received within 30 days of the notice required in paragraph (a)(2) of this section.

(c) Act on an offer to buy the acquired agricultural real estate at less than the appraised value.

(1) The System institution must consider the offer if it was received within 30 days of the notice required in paragraph (a) of this section.

(2) If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value.

(3) If the System institution rejects this offer, it must notify the previous owner of the decision within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value. The previous owner has 15 days from receipt of the notice to submit an offer to buy at such price or under such terms and conditions. The System institution may not sell the acquired agricultural real estate to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those extended to the previous owner without first notifying the previous owner by certified mail and providing an opportunity to buy the property at such price or under such terms and conditions.

(d) For purposes of this section, financing by the System institution is not a term or condition of the sale of acquired agricultural real estate. A System institution is not required to provide financing to the previous owner for purchase of acquired agricultural real estate.

§ 617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to lease, it must notify the previous owner, by certified mail, of the property's appraised rental value, as established by an accredited appraiser, and of the previous owner's right to:

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

(2) The notice must inform the previous owner that any offer must be received within 15 days of receipt of the notice.

(b) Act on an offer to lease the acquired agricultural real estate at a rate equivalent to the appraised rental value of the property.

(1) Within 15 days after receipt of such offer, the System institution may accept the offer to lease the property at the appraised rental value and lease the property to the previous owner, or

(2) Within 15 days after receipt of such offer, the System institution may reject the offer to lease the property at the appraised rental value when the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all the payments, terms, and conditions of such lease.

(c) Act on an offer to lease the acquired agricultural real estate at a rate that is less than the appraised rental value of the property.

(1) The System institution must consider the offer to lease the property at a rate that is less than the appraised rental value of the property. Notice of

the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of the offer.

(2) If the System institution accepts the offer to lease the property at less than the appraised rental value, it must notify the previous owner and lease the property to the previous owner.

(3) If the institution rejects the offer, the System institution must notify the previous owner of this decision. The previous owner has 15 days after receipt of the notice in which to agree to lease the property at such rate or under such terms and conditions. The System institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner without first informing the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

§ 617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?

System institutions electing to sell or lease acquired agricultural real estate or a portion of it through a public auction, competitive bidding process, or other similar public offering:

(a) Must notify the previous owner, by certified mail, of the availability of such property. The notice must contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(b) If the System institution receives two or more qualified bids in the same amount, the bids are the highest received, and one of the qualified bids is from the previous owner, the institution must accept the offer by the previous owner; and

(c) The System institution must not discriminate against a previous owner in these proceedings.

§ 617.7625 Whom should the System institution notify?

Each certified mail notice requirement in this section is fully satisfied by mailing one certified mail notice to the last known address of the previous owner or owners.

§ 617.7630 Does this Federal requirement affect any state property laws?

The rights provided under section 4.36 of the Act and this section do not affect any right of first refusal under the law of the state in which the property is located.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2506 Filed 2–3–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747SP, and 747SR series airplanes. This proposal would require repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing, and repair of cracked structure. This proposal also provides for an optional modification of a certain area. This action is necessary to find and fix such fatigue cracking, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–178–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–178–AD.'' The postcard will be date stamped and returned to the commenter.