

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).