

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 for 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.