

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.

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

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

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

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

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

617.7525SUBJECT≤May FCA use other enforcement actions?

**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.