

§ 614.4513

other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

[53 FR 35454, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993]

§ 614.4513 Uninsured voluntary and involuntary accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a System institution, may make voluntary advance conditional payments intended to be applied to future maturities. The monies in the advance conditional payment accounts may be available for return to the borrower in lieu of increasing his loan. System institutions may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). System institutions shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) System institutions may establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

[53 FR 35454, Sept. 14, 1988]

§ 614.4514 Protection of borrowers who meet all loan obligations.

(a) A qualified lender may not foreclose on any loan because of the failure of the borrower to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless:

(1) The borrower sells or otherwise disposes of part or all of the collateral

12 CFR Ch. VI (1-1-04 Edition)

and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in a written agreement entered into by the parties.

(c) After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal and/or interest payments.

(d) If a qualified lender places any loan in a noninterest-earning status *and* such action results in an adverse action being taken against the borrower, such as revocation of any undisbursed loan commitment, the lender shall document such change of status and promptly notify the borrower in writing of such action and the reasons therefore. If the borrower was not delinquent in any principal or interest payment under the loan 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 such denial before the appropriate credit review committee pursuant to §§ 614.4441 and 614.4443. The borrower must request such a review within 30 days after receipt of the notice.

[53 FR 35454, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993]

§ 614.4515 [Reserved]

§ 614.4516 Restructuring policy and procedures.

Loan restructurings are to be accomplished in accordance with the policy adopted by the bank board of directors under section 4.14A(g) of the Act.

(a) *Notice.* When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

(1) A copy of the policy of the lender established under section 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application

for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) *Opportunity for meeting.* The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring;

(2) With respect to a loan that is in a noninterest-earning status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) *Voluntary consideration of restructuring.* A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an individual borrower.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 58 FR 62514, Nov. 29, 1993; 61 FR 67187, Dec. 20, 1996; 62 FR 25831, May 12, 1997]

§614.4517 Restructuring decision.

(a) *Consideration of application.* When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure considering all relevant factors including:

(i) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(iii) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable prob-

ability 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 institution;

(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 restructurings on the loan, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in a noninterest-earning status.

(b) *Required restructuring.* If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(c) *Documentation.* In the event that an application for restructuring is denied, a qualified lender shall maintain sufficient documentation to demonstrate its compliance with paragraphs (a) and (b) of this section, as applicable.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 61 FR 67187, Dec. 20, 1996]