

§ 614.4518

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§ 614.4518 Notice of denial of restructuring and right to review.

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice, by certified mail or 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 notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

(a) The reason(s) for the denial, and any critical assumptions and relevant information upon which the reasons are based, except that any confidential information shall not be disclosed;

(b) Notification that the borrower may request a review of the denial;

(c) Notification that any request for such review must be made in writing within 7 days after receiving such notice;

(d) A brief explanation of the process for seeking review of the denial, including the appraisal process; and the right to appear before the credit review committee, pursuant to §§ 614.4442 and 614.4443 accompanied by counsel or by any other representative, if the borrower so chooses.

[53 FR 35455, Sept. 14, 1988]

§ 614.4519 Notice before foreclosure; limitation on foreclosure.

(a) Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for possible restructuring, and shall include with such notice a copy of the policy and the materials described in § 614.4516(a)(2). The notice shall also inform the borrower that the alternative to restructuring may be foreclosure.

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any

pending consideration of the loan for restructuring under this subpart, and completion of credit review committee consideration, if applicable. This section shall 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.

(c) Any foreclosure proceeding which is commenced by a certified lender after the lender's credit review committee has rejected a borrower's appeal on a restructuring application must be terminated if the Special Asset Group in its district prescribes a restructuring plan to the lender which the borrower accepts.

[53 FR 35455, Sept. 14, 1988]

§ 614.4520 [Reserved]

§ 614.4521 Participation in State agricultural loan mediation programs.

(a) If initiated by a borrower, System institutions shall, either concurrently with consideration of loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and shall 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 shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such 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.

[53 FR 35456, Sept. 14, 1988]

§ 614.4522 Right of first refusal.

(a) For purposes of this section, in addition to the definitions in § 614.4512, the following definitions shall apply:

(1) *Acquired real estate* means agricultural real estate acquired by an institution of the System 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;

(2) *Previous owner* means the prior record owner who was a borrower from a System institution who did not have the financial resources, as determined by the institution, to avoid foreclosure on agricultural real estate; where the borrower is not the prior record owner, *previous owner* means the prior record owner where that owner's land was used as collateral for a loan to a System borrower; and

(3) *System institution or institution of the System* means all System institutions, except banks for cooperatives.

(b) Upon acquiring agricultural real estate as a result of a loan foreclosure or voluntary conveyance by a borrower, the System institution shall determine whether the borrower had the financial resources to avoid foreclosure and document this determination in the file for the acquired real estate.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired real estate, or any portion of such property, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

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

(ii) To offer to purchase the property at a price less than the appraised value.

The notice shall inform the previous owner that any offer must be received within 30 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 15 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired

real estate at a price less than the appraised value, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property 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 that were extended to the previous owner; without first notifying the previous owner by certified mail and providing an opportunity to purchase the property at such price or under such terms and conditions.

The previous owner shall have 15 days from receipt of the notification to submit an offer to purchase at such price or under such terms and conditions.

(4) For purposes of this section, financing by the System institution shall not be considered a term or condition of the sale of acquired real estate. A System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(d) Except as provided in paragraph (e) of this section, System institutions electing to lease acquired real estate, or any portion of such property, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to lease, of the appraised rental value of the property, as established by an accredited appraiser, and of the 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.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from a previous owner to lease the property at the appraised rental value, within 15 days after the receipt of such offer, and

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lease the property to the previous owner, unless 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 of the payments, terms and conditions of such lease.

(3) Shall consider an offer from a previous owner 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 such offer. If the institution rejects such an offer, the 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 notifying the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

The previous owner shall have 15 days after receipt of the notification in which to agree to lease the property at such rate or under such terms and conditions.

(e) System institutions electing to sell or lease acquired real estate or a portion thereof through a public auction, competitive bidding process, or other similar public offering:

(1) Shall notify the previous owner, by certified mail, of the availability of such property. Such notice shall 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;

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

(3) Shall not discriminate against a previous owner.

(f) Each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

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(g) The rights provided under section 4.36 of the Act, and this section, shall not diminish any right of first refusal under the law of the State in which the property is located.

[53 FR 35456, Sept. 14, 1988, as amended at 53 FR 52401, Dec. 28, 1988; 58 FR 48791, Sept. 20, 1993]

Subpart O—Special Lending Programs

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, bank and association boards may adopt policies permitting the bank or association to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank or association, pursuant to its board policies, may enter into an agreement with third parties that will accrue to the benefit of the borrower and the lender to perform functions in the making or servicing of loans other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating association or bank, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered.

(c) Production credit associations and agricultural credit associations may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating association or the Farm Credit district, written consent of each bank and association affected shall be obtained before making such loans. Reasonable