

§ 617.7405 On what policies are loan restructurings based?

Loan restructurings must be made in accordance with the policy adopted by the supervising bank board of directors under section 4.14A(g) of the Act.

§ 617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?

(a) What are the notice requirements?

When a qualified lender determines that a loan is, or has become, distressed, the lender must provide one of the following written notices to the borrower stating that the loan may be suitable for restructuring.

(1) A notice stating that the loan has been identified as distressed and that the borrower has the right to request a restructuring of the loan (nonforeclosure notice).

(2) A notice that the loan has been identified as distressed, that the borrower has the right to request a restructuring of the loan, and that the alternative to restructuring may be foreclosure (45-day notice). The qualified lender must provide this notice to the borrower no later than 45 days before the qualified lender begins foreclosure proceedings with respect to any loan outstanding to the borrower. This notice must specifically state that if the loan is restructured and the borrower does not perform under the restructure agreement (as described in § 617.7410(e)), the qualified lender may initiate foreclosure proceedings without further notice.

(b) What should each notice include?

(1) A copy of the policy the qualified lender established governing the treatment of distressed loans; and

(2) All materials necessary for the borrower to submit an application for restructuring.

(c) What notice should a qualified lender send to a borrower who is a debtor in a bankruptcy proceeding? The qualified lender should send a notice that identifies the loan as distressed and the statutory right to file an application for a restructuring. The notice may also restate the language from the automatic stay provision to emphasize that the notice is not intended as an attempt to collect, assess, or recover a claim.

(d) Whom should the qualified lender notify? The qualified lender is required to notify all primary obligors. If the obligors identify one party to receive notices, the qualified lender should send the original notice to that person and send copies to the other obligors. For borrowers in a bankruptcy proceeding, the qualified lender should send the notice to the borrower and, if retained, the borrower's counsel.

(e) When is a qualified lender required to send another restructure notice to a borrower whose loan was previously restructured? A qualified lender must notify a borrower of the right to file another application to restructure the loan if the qualified lender sent the nonforeclosure notice to the borrower and the borrower has performed on the previous restructure agreement. Performance means that a borrower has made six consecutive monthly payments, four consecutive quarterly payments, three consecutive semiannual payments, or two consecutive annual payments. However, a qualified lender is not required to send another notice if they previously sent a 45-day notice, as described in § 617.7410(a)(2), and a borrower did not perform under a restructure agreement, as described above.

(f) Does the borrower have the opportunity to meet with the qualified lender after receiving the restructure notice? The qualified lender must provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender. The borrower and lender may meet to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring. A meeting to discuss a loan that is in a non-interest-earning status may also involve developing a plan for restructuring, if the qualified lender determines the loan is suitable for restructuring.

(g) May the qualified lender voluntarily consider restructuring for a borrower who did not submit a restructuring application? A qualified lender may, in the absence of an application for restructuring from a borrower, propose restructuring to an individual borrower.