

§ 617.7430

§ 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

§ 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.

12 CFR Ch. VI (1–1–08 Edition)

§ 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 will 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

Farm Credit Administration

§617.7610

information is necessary. Once FCA has received sufficient information, it must decide whether to issue a directive as originally proposed or as modified.

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

A distressed loan restructuring directive is effective immediately on receipt by the qualified lender, or on such later date as may be specified by FCA, and will remain effective and enforceable until it is stayed, modified, or terminated by FCA.

§617.7525 May FCA use other enforcement actions?

FCA may issue a distressed loan restructuring directive in addition to, or instead of, any other action allowed by law, including cease and desist proceedings, civil money penalties, or the granting or conditioning of any application or other requests by the System institution.

Subpart G—Right of First Refusal

§617.7600 What are the definitions used in this subpart?

In addition to the definitions in §617.7000, the following definitions apply to this subpart.

Acquired agricultural real estate or property means agricultural real estate acquired by a System institution 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.

Previous owner means:

(1) The prior record owner who was a borrower from a System institution and did not have the financial resources, as determined by the institution, to avoid foreclosure on acquired agricultural real estate; or

(2) The prior record owner who is not a borrower and whose acquired agricultural real estate was used as collateral for a loan to a System borrower.

System institution means a Farm Credit System institution, except a bank for cooperatives, which makes loans as defined in §617.7000.

§617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?

The right of first refusal applies only to borrowers who did not have the financial resources to avoid foreclosure or voluntary conveyance. A System institution must clearly document in its files whether the borrower had the resources to avoid foreclosure or voluntary conveyance.

§617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to sell acquired agricultural real estate, it must notify the previous owner, by certified mail, of the property's appraised fair market value as established by an accredited appraiser and of the previous owner's right to:

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

(ii) Offer to buy the property at a price less than the appraised value.

(2) That any offer must be received within 30 days of receipt of the notice.

(b) Act on an offer to buy the acquired agricultural real estate at the appraised value. Within 15 days after the receipt of the previous owner's offer to buy the acquired agricultural real estate at the appraised value, the System institution must accept the offer and sell the property to the previous owner if the offer was received within 30 days of the notice required in paragraph (a)(2) of this section.

(c) Act on an offer to buy the acquired agricultural real estate at less than the appraised value.

(1) The System institution must consider the offer if it was received within 30 days of the notice required in paragraph (a)(2) of this section.

(2) If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value.

(3) If the System institution rejects this offer, it must notify the previous