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| **Statute:** | 1971 ACT AS AMENDED |
| **Title:** | Title IV Provisions Applicable to Two or More Classes of Institutions of the System |
| **Part:** | Part C Rights of Borrowers; Loan Restructuring |
| **Subtitle:** | [Subtitle] |
| **Chapter Name:** | [Chapter Name] |
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12 U.S.C. 2202a **SEC. 4.14A. RESTRUCTURING DISTRESSED LOANS.**

 **(a)** DEFINITIONS. As used in this part and section 4.36:

 **(1)** APPLICATION FOR RESTRUCTURING. The term "application for restructuring" means a written request**—**

 **(A)** from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

 **(B)** submitted on the appropriate forms prescribed by the qualified lender; and

 **(C)** accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

 **(2)** COST OF FORECLOSURE. The term "cost of foreclosure" includes**—**

 **(A)** the difference between the outstanding balance due on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

 **(B)** the estimated cost of maintaining a loan as a nonperforming asset;

 **(C)** the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

 **(D)** the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

 **(E)** all other costs incurred as the result of the foreclosure or liquidation of a loan.

 **(3)** DISTRESSED LOAN. The term "distressed loan" means a loan that the borrower does not have the financial capacity to pay according to its terms and that exhibits one or more of the following characteristics:

 **(A)** The borrower is demonstrating adverse financial and repayment trends.

 **(B)** The loan is delinquent or past due under the terms of the loan contract.

 **(C)** One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the lender.

 **(4)** FORECLOSURE PROCEEDING. The term "foreclosure proceeding" means**—**

 **(A)** a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

 **(B)** the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under title I or II, to effect collection of a nonaccrual or distressed loan.

 **(5)** LOAN.

 **(A)** IN GENERAL. Subject to subparagraph (B), the term "loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

 **(B)** EXCLUSION FOR LOANS DESIGNATED FOR SALE INTO SECONDARY MARKET.

 **(i)** IN GENERAL. Except as provided in clause (ii), the term "loan" does not include a loan made on or after the date of enactment of this subparagraph that is designated, at the time the loan is made, for sale into a secondary market.

 **(ii)** UNSOLD LOANS.

 **(I)** IN GENERAL. Except as provided in subclause (II), if a loan designated for sale under clause (i) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the provisions of this section and sections [4.14](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%204.14.docx), [4.14B](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%204.14B.docx), [4.14D](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%204.14D.docx), and [4.36](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%204.36.docx) that would otherwise apply to the loan in the absence of the exclusion described in clause (i) shall become effective with respect to the loan.

 **(II)** LATER SALE. If a loan described in subclause (I) is sold into a secondary market after the end of the 180-day period described in subclause (I), subclause (I) shall not apply with respect to the loan beginning on the date of the sale.

 **(6)** QUALIFIED LENDER. The term "qualified lender" means**—**

 **(A)** a System institution that makes loans (as defined in paragraph (5)) except a bank for cooperatives; and

 **(B)** each bank, institution, corporation, company, union, and association described in section [1.7](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%201.07.docx)(b)(1)(B) but only with respect to loans discounted or pledged under section [1.7](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%201.07.docx)(b)(1).

 **(7)** RESTRUCTURE AND RESTRUCTURING. The terms "restructure" and "restructuring" include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any 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.

 **(b)** NOTICE.

 **(1)** IN GENERAL. On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice**—**

 **(A)** a copy of the policy of the lender established under subsection (g) that governs the treatment of distressed loans; and

 **(B)** all materials necessary to enable the borrower to submit an application for restructuring on the loan.

 **(2)** NOTICE BEFORE FORECLOSURE. 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 restructuring, and shall include with such notice a copy of the policy and the materials described in paragraph (1).

 **(3)** LIMITATION ON FORECLOSURE. 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 section.

 **(c)** MEETINGS. On determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower thereof to personally meet 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; and

 **(2)** with respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring.

 **(d)** CONSIDERATION OF APPLICATIONS.

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

 **(A)** whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

 **(B)** whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

 **(C)** whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

 **(D)** whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

 **(E)** 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 nonaccrual status.

 **(2)** APPLICATIONS NOT REQUIRED FOR RESTRUCTURING PLANS. This section shall not prevent a qualified lender from proposing a restructuring plan for an individual borrower in the absence of an application for restructuring from the borrower.

 **(e)** RESTRUCTURING.

 **(1)** IN GENERAL. 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.

 **(2)** COMPUTATION OF COST OF RESTRUCTURING. In determining whether the potential cost to the qualified lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including-

 **(A)** the present value of interest income and principal forgone by the lender in carrying out the restructuring plan;

 **(B)** reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

 **(C)** 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 probability that orderly debt retirement will occur as a result of the proposed restructuring; and

 **(D)** whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

 **(f)** LEAST COST ALTERNATIVE. If two or more restructuring alternatives are available to a qualified lender under this section 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.

 **(g)** RESTRUCTURING POLICY.

 **(1)** ESTABLISHMENT. Each bank board of directors shall develop a policy within 60 days after the date of the enactment of this section, that is consistent with this section, to govern the restructuring of distressed loans. Such policy shall constitute the restructuring policy of each qualified lender within the district.

 **(2)** CONTENTS OF POLICY. The policy established under paragraph (1) shall include an explanation of**—**

 **(A)** the procedure for submitting an application for restructuring; and

 **(B)** the right of borrowers with distressed loans to seek review by a credit review committee in accordance with section [4.14](http://ww3.fca.gov/readingrm/handbook/Statutes/SEC.%204.14.docx) of a denial of an application for restructuring.

 **(3)** SUBMISSION OF POLICY TO FCA. Each bank board shall submit the policy of the district governing the treatment of distressed loans under this section to the Farm Credit Administration. Notwithstanding the duty imposed by the preceding sentence, the other duties imposed by this section shall take effect on the date of the enactment of this section.

 **(h)** COMPLIANCE. The Farm Credit Administration may issue a directive requiring compliance with any provision of this section to any qualified lender that fails to comply with such provision.

 **(i)** PERMITTED FORECLOSURES. This section shall not be construed to prevent any qualified lender from enforcing any contractual provision that allows the lender to foreclose a loan or from taking such other lawful action as the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the State in which the collateral is located.

 **(j)** APPLICATION OF SECTION. The time limitation prescribed in subsection (b)(2) of this section, and the requirements of subsection (c), shall not apply to a loan that became a distressed loan before the date of the enactment, if the borrower and lender of the loan are in the process of negotiating loan restructuring with respect to the loan.

 **(k)** ASSISTANCE IN RESTRUCTURING. Each Farm Credit Bank, on request of any association, may assist the association in restructuring loans under this section.