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| **Title:** | **PROPOSED RULE--Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions--12 CFR Parts 614, 615, and 618** |
| **Date of Issuance:** | **5/12/1988** |
| **Agency:** | **FCA** |
| **Federal Register Cite:**  | **53 FR 16937** |

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) enacted on January 6, 1988, amended provisions of the Farm Credit Act of 1971 (Act) by establishing new borrower rights. These include, among other things, procedures for the restructuring of loans from certain Farm Credit System (System) institutions which have become "distressed loans" as defined in the Act, protection for certain borrower stock, certain protections for borrowers who have met all loan obligations, cooperation by System institutions with certified State agricultural loan mediation programs, and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions. On February 16, 1988, the Farm Credit Administration (FCA) published an Advance Notice of Proposed Rulemaking ([53 FR 4417](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/53%20FR%204417.docx)) requesting comments on the manner and process for implementing the new requirements of the Act. The FCA publishes proposed rules on these and related topics.

**DATES:** Comments must be received on or before June 13, 1988. A public hearing will be held on June 8, 1988. For information on the hearing, see the "Final Notice of Hearing" published elsewhere in today's **Federal Register**.

**ADDRESS:** Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**TEXT: SUPPLEMENTARY INFORMATION:** Title I of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding several new sections to Title IV of the Act relating to the rights of those borrowing from System institutions. In particular, System institutions which are qualified lenders are directed to develop policies governing the restructuring of distressed loans, as those terms are defined in the Act, and to submit such policies to FCA. Other revised provisions specify the review available to applicants and/or borrowers who are denied credit or restructuring of their loans, provide protection for borrower stock and voluntary or involuntary advance payment accounts, clarify procedures to be used in informing borrowers about qualifying for differential interest rate programs, establish certain protections for borrowers who have met all loan obligations, and provide a right of first refusal to certain borrowers to repurchase or lease certain property acquired by System institutions through foreclosure or voluntary conveyance. In addition, section 503(b) of the 1987 Act requires the FCA to prescribe rules requiring System institutions to cooperate in good faith with requests for and analysis of information made in the course of mediation under any State agricultural loan mediation program certified by the Secretary of Agriculture in accordance with section 501 of the 1987 Act.

On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking ([53 FR 4417](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/53%20FR%204417.docx)) inviting public comment on how to revise FCA's current regulations to address the new provisions of the Act. In response to the notice, comments were received from the Farm Credit Corporation of America on behalf of its 37 member banks. Supplemental comments were received from four individual districts. Five System associations, one State Attorney General, two groups representing family farmers, and three individuals also submitted comments. All comments received have been considered in drafting the proposed regulations which are published today. However, comments on sections of the Act concerning areas other than borrower rights, and opinions concerning enforcement of any adopted regulations have not been individually addressed in this proposal. The proposed amendments to the regulations are explained below by section within the affected part of title 12, including any comments received on the subject matter contained in that section. Comments which merely addressed the need to delete sections of the existing regulations have not been referenced.

**Part 614 -- Loan Policies and Operations**

***Subpart K -- Disclosure of Loan Information***

A technical amendment is proposed to be made to § 614.4365 to refer to "qualified lender" rather than System institution and to add a citation for the Truth in Lending Act.

The existing definitions in § 614.4366 are proposed to be amended to incorporate statutory language. Definitions of "loan," "loan origination charges," and "qualified lender" are proposed to be added. The definitions of loan and qualified lender are provided by the Act. Comments received indicated a need for clarification of the term "loan origination charges" since that term is used, but not defined in the Act. The definition proposed in the regulation is based on similar terms used in the implementing regulations and the commentary for the Truth in Lending Act. *See* 12 CFR Part 226.

Section 614.4367 is proposed to be revised to reflect the new language in section 4.13 of the Act, including references to the qualified lender, the effect of loan origination charges on the effective interest rate, disclosure of the at-risk nature of borrower stock (except stock guaranteed under section 4.9A of the Act), as well as the new disclosures required for loans that will or may be pooled pursuant to section 8.9 of the Act. A minor change to Model Form 1 is proposed to reflect the new disclosure requirements. One commentor questioned the usefulness of representative examples and sought borrower-specific loan disclosures. Given the clear statutory language in this area, FCA does not believe it would be appropriate to require such disclosures. This commentor also requested that FCA develop model disclosure forms for all the loan options available to borrowers, as well as for waiver of rights for loans sold in the secondary market. Considering the wide range of options which could be made available, FCA believes a model form in this area would be of little value. Another commentor requested clarification of what "loan options" meant, indicating an assumption that such options mean the various interest rate programs available to borrowers. While FCA believes interest rate programs would be considered loan options, individual lenders may have other types of programs which should also be disclosed. Therefore, FCA has not proposed a definition of that term. With respect to loans sold in the secondary market, the disclosures required by the statute and the regulations are explicit, obviating the need for the requested model form. FCA has adopted a suggestion from this commentor and has included a requirement in § 614.4367(b)(2) that qualified lenders inform borrowers that rights, if any, under applicable State laws are not waived. A comment was received from one System institution on the difficulty of timely compliance with the provisions of existing § 614.4367(c), especially where rate changes were tied to another institution's rate changes or some other readily identifiable index. This commentor recommended eliminating the requirement for advance notice of a rate change in these cases. Although the time limit has not been changed in the proposed regulation, FCA requests comment on the extent of such compliance difficulties and suggestions for a revised timeframe if appropriate. Depending on the comments received, FCA will consider revising the timeframe in the final regulation. The FCA disagrees with the commentor's assertion that advance notice of rate changes is of little value to a borrower whose only option may be to refinance the obligation. In fact, the advance notice is particularly relevant for such borrowers. It is also proposed to delete existing § 614.4367(b) as the required disclosure has already been made. It is proposed to delete § 614.4367 (e) and (f) and Model Forms 3 and 4 in their entirety as Banks for Cooperatives are no longer subject to the requirements. Deletion of § 614.4367(g) is proposed as the Farm Credit System Capital Corporation was dissolved on January 21, 1988 ([53 FR 4072](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/53%20FR%204072.docx), February 11, 1988) pursuant to the 1987 Act A new

§ 614.4368 is proposed to address the disclosure of differential interest rates required by new section 4.13(b) of the Act. The language of the proposed regulation tracks the statutory language.

***Subpart L -- Notice of Action and Review***

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart L to read as follows: *"Subpart L -- Actions on Applications; Review of Credit Decisions".*

In § 614.4440, the definitions of "adverse credit decision" and "applicant" are proposed to be revised. One commentor requested that FCA consider a denial of a formal application for a lower interest rate to be an adverse credit decision subject to credit review committee action. FCA believes the responsibilities of the credit review committee are clearly established in the Act and therefore, has not adopted this suggestion. Definitions of "application for restructuring," "loan," "qualified lender," and "restructure" or "restructuring" are proposed to be added to this section based on the definitions of those terms in the Act.

Section 614.4441 is proposed to be changed to delete references to "System institutions" and to substitute "qualified lender" as provided by the Act.

Section 614.4442 is proposed to be changed to refer to qualified lenders and to provide that a loan officer who was involved in the adverse credit decision on a loan may not participate in the credit review committee consideration of that loan, as provided by new section 4.14(a)(2) of the Act. One commentor indicated that, with the advent of the Farm Credit Banks as of July 5, 1988, if a Federal Land Bank Association (FLBA) did not merge with a Production Credit Association (PCA), the Farm Credit Bank might be required to perform all credit reviews at the bank level. The commentor suggested that Congress had not intended this result. The FCA believes the definition of qualified lender in the statute is clear in that only direct lenders are affected. Therefore, FCA must assume that the result was intended. The make-up of the Farm Credit Bank's credit review committee is a matter for its discretion, provided, however, that a District board member serves on the committee. Other comments received on this section concerned providing for election of the "farmer" on the board and the delegation of the duties of board members on these credit review committees. The FCA thoroughly addressed similar concerns in adopting the existing regulations. The FCA finds nothing in the 1987 Act or its legislative history to support adopting a different approach at this time.

Section 614.4443 is proposed to be revised to provide for the personal appearance of the borrower, accompanied by counsel and/or another representative of choice, submission of documentation to the credit review committee, and the request for independent appraisals as provided in new section 4.14 of the Act.

Section 614.4444 is proposed to be revised to refer to qualified lenders and the maintenance of credit review committee records, and records, if appropriate, on restructuring and participation in state mediation programs. One commentor suggested that FCA should clarify the purpose of such records and identify the class of persons intended to have access to such records. FCA establishes recordkeeping requirements such as these for System institutions as part of its regulatory and examination responsibilities, in order to enable FCA to perform its examination functions properly. The circumstances under which other persons might obtain access to institution records are varied and FCA believes it is inappropriate to specify them in this regulation.

***Subpart N -- Loan Servicing Requirements***

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart N to read as follows: *"Subpart N -- Loan Servicing Requirements; Restructuring; State Agricultural Loan Mediation Programs; Right of First Refusal".*

One commentor requested that FCA continue the requirement in § 614.4510 that originating lenders "*shall* be responsible for servicing the loans which they make," in light of the provision in new section 8.9(d)(3) of the Act which provides that originating lenders *may* retain servicing on loans which are pooled for sale in the secondary market. (Emphasis added.) FCA believes the intent of the new provision of the Act was to provide flexibility in this area to the lenders. However, no changes are proposed to the regulation at this time. Revisions to the language of § 614.4510 will be proposed in a separate **Federal Register** document. This commentor also requested FCA to clarify the language of § 614.4510(d) to provide that loan servicing policies must be approved by FCA rather than "furnished" to FCA. The title "Approved policies" refers to those policies approved by the bank not by FCA. The policies are, of course, subject to review for compliance with the regulatory requirements and adequacy of direction to management. However, no specific FCA approval is required prior to implementation. As indicated above, FCA will propose amendments to § 614.4510 in a separate **Federal Register** document.

A new § 614.4512 is proposed to provide definitions, for use in the subpart, of "Application for restructuring," "Cost of foreclosure," "distressed loan," "foreclosure proceeding," "loan," "qualified lender," and "restructure" or "restructuring." The definitions track the statutory language concerning these terms. Several commentors expressed concern that the elements of the cost of foreclosure be clearly defined. While FCA appreciates the need to have all costs considered, it believes a regulation cannot exhaustively list what all such costs are, as they may vary from State to State and possibly even loan to loan. Therefore, the definition includes item (5) which is intended to address any cost not specified but which nonetheless must be considered. One commentor was concerned that the definition of restructuring in section 4.14A(a)(7) of the Act be clarified so as not to apply in situations where routine extensions and other changes in loan contracts were made, as a result of product marketing plans or other changes in operational plans where distress is not involved. FCA believes this commentor may have misinterpreted the scope of section 4.14A of the Act as the definition of restructuring only applies to loans which are distressed. Furthermore, institutions may consider restructuring on loans at any time if it is determined to be in the best interest of the lender.

It is proposed to delete existing § 614.4513 "Forbearance," in its entirety as the Act's provisions concerning restructuring are now applicable. To implement the provisions of new section 4.37 of the Act, "Application of Uninsured Accounts," a new § 614.4513 is proposed to be added providing for the establishment of advance payment accounts by all qualified lenders. Necessary revisions to the regulations in 12 CFR Part 611 concerning the disposition of these accounts by receivers, and revisions to § 614.4090 concerning Federal land bank lending authorities, will be proposed in separate **Federal Register** documents.

A new § 614.4514, "Protection of Borrowers Who Meet All Loan Obligations," is proposed to address the prohibitions contained in new section 4.14D of the Act. The language of this section tracks the statutory language. One commentor requested clarification that advanced taxes, insurance premiums, attorneys' fees, and advertising costs must be collected before a loan is considered current. FCA believes that the loan documents specifically identify that money must be collected before a loan is considered current and that to specify a list in the regulation would be inappropriate. Another commentor stated that FCA should require that an agreement to alter the prohibition against required principal reduction in section 4.14D(b)(2) of the Act be a separately negotiated document from the original loan contract. The FCA has not adopted this suggestion as it believes the form of the agreement is a matter to be decided by the parties.

The proposed new § § 614.4515 through 614.4520 address the qualified lenders' obligations under the restructuring provisions of the Act, including the procedures to be followed in determining when to restructure, the borrower's right to a review of a denial of restructuring by the credit review committee of the lender, the notice required before foreclosure, and when foreclosure proceedings must be terminated. Although FCA is proposing regulations addressing these areas, the requirements were applicable to all distressed loans of qualified lenders, as those terms are defined in the Act, on the date of enactment of the 1987 Act. A commentor expressed concern that the qualified lender's policies concerning restructuring issued pursuant to section 4.14A(g) of the Act were not informative enough as they merely echoed the statutory provisions. This commentor requested FCA to specify the contents of the policies. FCA will review the policies submitted pursuant to section 4.14A(g)(3) of the Act to determine compliance with the statutory provisions but has not included specific requirements for such policies as they were required to be adopted prior to the promulgation of these regulations. FCA anticipates that lenders will update their policies as they gain experience in implementing the provisions of the Act. While the language of these sections generally tracks the statutory provisions, new § 614.4514(d) includes an example of an adverse action in connection with placing a loan in nonaccrual status. FCA invites comments on whether further examples, or a definition of "adverse action," should be included in the subsection.

One commentor requested that the notice of denial of restructuring, required by § 615.4518, include the calculations used by the lender to determine the cost of restructuring and foreclosure, and any other evidence used by the institution in considering the application. While FCA does not agree that this information should be required as part of the notice, it acknowledges that access to some of the critical assumptions and calculations used by the lender in reaching its determinations could be helpful to the borrower in deciding whether to appeal. Therefore, in § 615.4518(d), the FCA has included a requirement for notice of whom to contact at the lender to obtain access to this information. FCA has not specified what information the lender must make available but invites comment on whether such a listing is required, and if so, the type of information that should be included.

One commentor indicated that FCA's authority to issue a directive requiring compliance with the restructuring provisions in new section 4.14A of the Act requires additional regulations. FCA has not proposed any new regulations specifically concerning its enforcement authority in this area as it believes regulations are not warranted given the clear statutory language. This commentor also requested that FCA monitor credit review committee activity in districts where no Special Asset group existed and otherwise ensure that institutions were complying with the applicable provisions of these sections. FCA is, of course, required to do so by statute and is committed to doing so. Another commentor requested that § 614.4519 provide that the required 45-day notice period runs prior to the time the lender issues a summons and complaint in a foreclosure proceeding, as that term is defined in section 4.14A(a)(4) of the Act and proposed § 614.4512(e) of the regulations. This would allow the notice of intent to foreclose period to run concurrently with the 45-day distressed loan restructure period. FCA has not adopted this suggestion but invites comment on whether the regulation should specify when a foreclosure proceeding begins, e.g., when a loan is accelerated, issuance of a summons and complaint, etc. This commentor also requested that FCA specify that debtors' rights under bankruptcy laws substitute for the rights provided under the Act when a borrower files bankruptcy. FCA believes this is a determination for the Courts to make and has not included such a provision in the proposed regulations. Section 614.4519(c) provides that a certified lender may commence foreclosure proceedings after any applicable credit review committee consideration has been completed. However, since the restructuring decisions of certified lenders are subject to review by the District Special Asset Group, foreclosure proceedings would have to be terminated if that group prescribed a restructuring plan acceptable to the borrower. FCA believes this balances the borrower's right to review of the denial of restructuring against the certified lender's right to timely foreclosure action where it is warranted.

A new § 614.4520 is proposed to address the review of restructuring decisions required for institutions which are certified eligible to receive assistance under new section 6.4 of the Act.

A new § 614.4521 is proposed to address the requirement for cooperation with certified State agricultural loan mediation programs and provides that such participation may occur concurrently with the required restructuring under new section 4.14A of the Act. Comments received supported the provision that the processes could occur simultaneously. Given the requirement for certification by the Secretary of Agriculture and the possibility of wide variations in State programs, the FCA does not currently anticipate a need to specify more detailed processes for cooperation. However, FCA will consider doing so if experience with the programs demonstrates it is necessary. One commentor sought to have FCA mandate participation in mediation programs even if the mediation is initiated by another creditor of the borrower. FCA believes that participation in State mediation programs, other than those specified in section 503(b) of the 1987 Act, is governed by the applicable State law and has not adopted this suggestion. Section 614.4521 would also implement the provisions of new section 4.14E of the Act by prohibiting conditioning of a loan from a System institution on the waiver of rights under a State mediation program. One commentor expressed concern that such a general prohibition be included in the regulations. One non-System commentor expressed support for the mediation process in general, based on experience in that commentor's State, and commended the process for use by System institutions. This commentor also supported disclosure of lender information to the borrower in the process of the mediation to ensure meaningful negotiations. This issue was addressed more fully above in connection with proposed § 614.4518.

A new § 614.4522 is proposed to address the right of first refusal provided in new section 4.36 of the Act. One commentor requested that FCA specify that all acquired property be sold through public auction as it was asserted that this process would assure the highest price for the property. This commentor also wanted to assure competition between auctioneers for the right to sell the property. FCA believes the decision concerning the manner of disposing of acquired property, if consistent with sound business practices, is a matter of discretion for the lender and, therefore, has not adopted this commentor's suggestions. Another commentor indicated that sale by public auction has become more commonplace since enactment of the 1987 Act. This commentor requested FCA to require notification to the borrower of the fair market value of the property even if it is to be sold at public auction, and to require that a minimum bid must always be specified. FCA believes such requirements go beyond those in the statute and has not adopted these suggestions.

**Part 615 -- Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations**

***Subpart J -- Prescription, Subscription and Retirement of Stock***

In order to implement the provisions of new section 4.14B of the Act, it is proposed to add three new paragraphs, (e), (f), and (g) to § 615.5255. Paragraphs (e) and (f) address the cancellation of stock by an FLB and FLBA, or by a PCA in the event principal is forgiven in the course of a restructuring under new § 614.4516. Paragraph (g) provides that a borrower shall be entitled to retain at least one share of stock to maintain membership and voting rights in the association.

**Part 618 -- General Provisions**

***Subpart G -- Releasing Information***

In order to implement the provisions of new section 4.12A of the Act, "Communications with Stockholders", it is proposed to revise § 618.8310(b)(1) to provide that System institutions will make stockholder lists available within 7 days of receipt of a request from a stockholder. No other changes are proposed to the language of that section.

It is also proposed to amend § 618.8320(b) to add a new paragraph numbered (9) which would authorize release of data concerning borrowers and loan applicants to the appropriate District Special Asset Group, if any, and the National Special Asset Council upon the request of either of these entities.

To implement the new provisions of section 4.13A of the Act, "Access to Documents and Information," it is proposed to revise § 618.8325(a) to add new definitions of "loan" and "qualified lender." Paragraph (b) is revised to substitute qualified lender wherever "bank or association" is used in the existing regulation. Paragraph (b) is further revised to include the requirement to furnish a copy of each appraisal of the borrower's assets made or used by the qualified lender. In response to comments received, the FCA also proposes to add language that one copy of the documents shall be furnished free of charge to the borrower but that the lender may assess reasonable copying charges for any additional copies requested by the borrower. One commentor suggested that appraisal documents only need be provided to one primary obligor. However, FCA believes it is appropriate to furnish each borrower, as that term is defined in this section, with a copy of any appraisal of that borrower's assets. Another commentor suggested that a request from a borrower for a copy of "my appraisal" should be interpreted to mean only the most recent appraisal. Since the statute provides that copies of documents shall be provided at the request of the borrower, FCA believes the language of the borrower's request would control what documents would be responsive to that request. Since the statute also clearly says "copies of each appraisal," FCA believes it would be contrary to legislative intent to narrowly interpret the language of a request to mean only the most recent appraisal, unless such an interpretation is clearly intended by the borrower. FCA acknowledges the time and expense to the qualified lender in order to comply with this statutory provision but believes these expenses must be construed as business expenses pursuant to the Act. Finally, comments were received on the need to protect confidential information used by the lender in the appraisal process, such as information on the value of other borrowers' property, private sales of acquired property, and benchmark comparables obtained under a pledge of confidentiality. The FCA invites comments on whether and how to limit disclosure of such information in the regulation or whether this issue can more appropriately be addressed on an individual basis.

Finally, the notice published on February 16, 1988 ([53 FR 4417](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/53%20FR%204417.docx)) requested comment on whether a public hearing would contribute to the FCA's consideration of these topics. Three comments were received, two in support of such a hearing and one which indicated a hearing was not necessary. It is anticipated that a hearing will be scheduled.

**List of Subjects in 12 CFR Parts 614, 615, and 618**

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas, Accounting, Government securities, Investments, Archives and records, Insurance, Technical assistance.

For the reasons stated in the preamble, Parts 614, 615, and 618 of Chapter VI of Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

**PART 614 -- LOAN POLICIES AND OPERATIONS**

1. The authority citation for Part 614 is revised to read as follows:

**Authority:** 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Subparts K and L, consisting of § § 614.4365 through 614.4368 and 614.4440 through 614.4444, are revised to read as follows:

**Subpart K -- Disclosure of Loan Information**

Sec.

614.4365 Applicability.

614.4366 Definitions.

614.4367 Required disclosures -- in general.

614.4368 Disclosure of differential interest rates.

**Subpart K -- Disclosure of Loan Information**

**§ 614.4365 Applicability.**

This subpart applies only to loans from qualified lenders if the loans are not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

**§ 614.4366 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a qualified lender. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time, adjusted to take into consideration the amount, as a percentage of the initial net proceeds of the loan, of any stock or participation certificates which the borrower must purchase pursuant to bylaw, policy or regulation in order to obtain the loan, and any loan origination charges.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated contract rate of interest applicable to the loan at a point in time, excluding any charges payable by the borrower in obtaining the loan.

(e) "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.

(f) "Loan origination charges" mean initial one-time transaction charges or fees, which may or may not be computed as a percentage of the transaction amount, and which are imposed on a borrower by a qualified lender to obtain a loan, but do not include charges imposed by someone other than the lender for services that are not required by the lender.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(h) "Standard adjustments factors" means those financial elements, including but not limited to, a qualified lender's cost of funds, operating expenses, provision for loan losses, and changes in retained earnings, which are typically taken into consideration by a qualified lender in adjusting the interest rate on loans.

**§ 614.4367 Required disclosures -- in general.**

(a) Each qualified lender shall furnish the following information in writing to a prospective borrower not later than the time of the loan closing:

(1) The current rate of interest on the loan;

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan;

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership and applicable loan origination charges on the current interest rate computed on an annualized basis;

(4) Except with respect to stock guaranteed under section 4.9A of the Act, a statement indicating that stock that is purchased is at risk;

(5) A statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrower's rights that apply to each type of loan.

(b) For loans that will or may be pooled for sale on the secondary market created under section 8.9 of the Act, in addition to the loan disclosure in paragraph (a) of this section, at the time of application for a loan, a qualified lender shall provide the following:

(1) Notification that the loan will or may be pooled;

(2) Notification that, if the loan will be pooled, the borrower will be required to execute at closing a waiver of his right to have the loan considered for restructuring under Title IV of the Act and 12 CFR Part 614, with a statement that rights, if any, under applicable State laws are not waived;

(3) Notification that the borrower has the right not to have his loan pooled;

(4) Notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to his loan; and

(5) Notification of any other terms and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(c) Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each qualified lender that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(e) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (d) of this section will be satisfied by providing the disclosure to any one of such parties.

**Appendix to 12 CFR 614.4367 -- Required Disclosure**

**Model Disclosure Forms**

**General**

The following are model disclosure forms which System institutions may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give System institutions an idea of the type and extent of information that should be contained therein. System institutions are not required to follow the format of the sample forms. System institutions may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

**Form 1**

This loan it *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Interest Rate Disclosure

Date:

Lender:

 (Name)

Stated Interest Rate

The rate of interest currently applicable to your loan

(Percentage)

Borrower:

 (Name)

Effective Interest Rate 1

 nThe stated rate of interest adjusted to take into account loan origination charges and purchase of stock

n 1 This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment.

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate. The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (*list the factors*).

(Percentage)

Check Applicable Box

 square This is a FIXED RATE LOAN -- the stated rate of interest is not subject to change during the life of the loan.

 square This is an ADJUSTABLE RATE LOAN -- the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan --

The interest rate on the loan may be changed (*Period*).

The interest rate may be changed a maximum # (*Percentage*).

The Standard Adjustment Factors may square or may not square be changed during the life of the loan.

Except with respect to stock guaranteed under section 4.9A of the Farm Credit Act of 1971, stock that is purchased in this institution is at risk.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

**Form 2**

This loan is not subjected to the Truth in Lending Act, 15 U.S.C. 1601 *et seq*. The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Disclosure of a Change in the Effective Interest Rate

Date:

Lender:

 (Name)

Borrower:

 (Name)

This is to inform you that on *(loan and loan number),*

 square The effective rate of interest will be adjusted effective *(Date).*

The effective rate of interest on your loan is changed to *(Percentage)* from *(Percentage)*.

This change resulted from a:

 square 1. Change in the amount of stock borrowers are required to hold in the lender to *(Percentage)* from *(Percentage)*.

 square 2. Change in the stated rate of interest on your loan effective *(Date)*.

The stated rate of interest on your loan changed to *(Percentage)* from *(Percentage)*.

The change was computed based on the:

 square Standard adjustment factors -- factors mentioned on the initial interest rate disclosure.

 square Other -- describe.

 square 3. Change for other reasons -- describe.

Should you have any questions concerning the information contained herein, please contact us at *(Telephone Number)*.

**§ 614.4368 Disclosure of differential interest rates.**

A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

**Subpart L -- Actions on Applications; Review of Credit Decisions**

Sec.

614.4440 Definitions.

614.4441 Notice of action on loan application.

614.4442 Credit review committee

.

614.4443 Review process.

614.4444 Records.

**Subpart L -- Actions on Applications; Review of Credit Decisions**

**§ 614.4440 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adverse credit decision" means a decision to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for; to deny an application for restructuring; or to deny a request to return a nonaccrual loan to accrual status.

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring or who requests return of a nonaccrual loan to accrual status.

(c) "Application for restructuring" means a written request --

(1) 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;

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

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

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "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.

(f) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives;

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) (as of July 5, 1988).

(g) "Restructure" and "restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, or 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.

**§ 614.4441 Notice of action on loan application.**

Each qualified lender shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the qualified lender shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the qualified lender makes an adverse credit decision, the notice shall include:

(a) The reasons for the qualified lender's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the right to appear before the credit review committee.

**§ 614.4442 Credit review committee.**

The board of directors of each qualified lender shall establish one or more credit review committees to review adverse credit decisions made by the lender. The membership of each committee shall include at least one member from the lender's board. In no case shall a loan officer involved in the adverse credit decision on the loan being reviewed serve on the credit review committee when the committee reviews such loan. The duties of the members of the credit review committee may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an alternate designated by the board who shall also be a board member.

**§ 614.4443 Review process.**

(a) *Personal appearance.* Each applicant or borrower who is entitled to and has requested a review may appear in person before the credit review committee. The applicant or borrower may be accompanied by counsel and/or by any other representative of choice, to seek a reversal of the decision on the application under review.

(b) *Documentation.* An applicant may submit any documents or other evidence to support the information contained in the unsuccessful loan application which the applicant believes will demonstrate that the loan applied for is an eligible loan that satisfies the credit standards of the lender.

(c) *Independent appraisals.* An applicant for a loan or a borrower who has applied for a restructuring and for which additional collateral was demanded by the lender when determining whether to restructure the loan may, as a part of the request for a review, request an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for an appraisal, the credit review committee shall --

(1) Present the applicant or borrower with a list of three accredited appraisers approved by the qualified lender from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the applicant or borrower;

(2) Provide a copy of the appraisal to the applicant or borrower;

(3) Consider the results of any such appraisal in any final determination with respect to the loan or restructuring.

(d) *Decision.* The credit review committee shall reach a decision on the application in its sole discretion, and such decision shall be the final decision of the lender. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower in writing of the decision of the committee and the reasons for the decision.

**§ 614.4444 Records.**

A qualified lender shall maintain a complete file of all requests for reviews by the credit review committee, including participation in State mediation programs, and the disposition of each review by the committee. A qualified lender shall also maintain sufficient materials to permit the Special Asset Group in its district, if any, under § 614.4520 to review each determination not to restructure a loan and to permit the National Special Asset Council to review any loan for which it requests information.

3. The heading of Subpart N is revised to read as follows:

**Subpart N -- Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal**

4. Subpart N is amended by adding a new § 614.4512 to read as follows:

**§ 614.4512 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) "Application for restructuring" means a written request --

(1) 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;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

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

(b) "Certified lender" means a qualified lender that has been certified for financial assistance under section 6.4 of the Act.

(c) "Cost of foreclosure" means:

(1) The difference between the outstanding balance due as provided by the loan documents 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;

(2) The estimated cost of maintaining a loan as a nonperforming asset;

(3) 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;

(4) 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 of liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d)(1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Foreclosure proceeding" means:

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

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I or II of the Act to effect collection of a nonaccrual of distressed loan.

(f) "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.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988), but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(h) "Restructure" or "restructuring" means 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.

5. Section 614.4513 is revised to read as follows:

**§ 614.4513 Advance payment accounts.**

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a qualified lender, may make voluntary advance conditional payments to be applied to future maturities or to be available for return to the borrower for purposes for which the lender would increase their existing loans. Lenders 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). Qualified lenders shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) Qualified lenders 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.

**§ 614.4520 [Redesignated as § 614.4525]**

6. Subpart O is amended by redesignating § 614.4520 as § 614.4525.

7. Subpart N is amended by adding new § § 614.4514-4522 to read as follows:

**§ 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; 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 nonaccrual 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 under § 614.4443.

**§ 614.4515 Restructuring policy and reporting.**

(a) Loan restructurings are to be accomplished in accordance with:

(1) The policy adopted by the district board of directors under section 4.14A(g) of the Act;

(2) Any restructuring plan required by the District Special Asset Group under section 4.14C(b)(2) of the Act, if applicable.

(b) Beginning on July 6, 1988, and every 6 months thereafter until January 6, 1993, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing:

(1) The results of its review of its distressed loans, conducted in order to determine which loans are suitable for restructuring; and

(2) The financial effect of loan restructurings and liquidations on the lender.

**§ 614.4516 Restructuring procedures.**

(a) *Notice.* 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:

(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; 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 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.

**§ 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;

(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, 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 nonaccrual status.

(b) *Required restructuring.*If a qualified lender determines that the potential cost to the 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) *Evaluation of cost restructuring.*In determining whether the potential cost to a qualified lender of a restructuring plan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including:

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

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

(3) 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

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

**§ 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 of its decision to the borrower. 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;

(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 whom to contact at the lender for access to information; and the right to appear before the credit review committee, established pursuant to § 614.4442, accompanied by counsel and/or by any other representative, if the borrower so chooses.

**§ 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).

(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.

(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.

**§ 614.4520 Review of restructurings for certified institutions; reporting.**

(a) Within 9 months after a qualified lender is certified under section 6.4 of the Act, such lender shall review each loan that has not been previously restructured and that is in nonaccrual status on the date the lender is certified, and shall determine whether to restructure the loan. Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Within 30 days after a qualified lender in a district is certified to issue preferred stock under section 6.27 of the Act, the district board of such district or the board of directors of the Farm Credit Bank, as the case may be, shall establish a special asset group that shall review each determination by the lender not to restructure a loan. If a Special Asset Group determines that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement if the borrower agrees.

(c) The National Special Asset Council, established by the Farm Credit System Assistance Board, will:

(1) Under section 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under section 6.27 of the Act, and by Special Asset Groups established under paragraph (b) of this section; and

(2) Review a sample of determinations made by each special asset group that a loan will not be restructured.

(d) With respect to determinations by a Special Asset Group that a loan will not be restructured, the Special Asset Group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) The National Special Asset Council will review a sufficient number of determinations made by each Special Asset Group to foreclose on any loan to assure the Council that such group is complying with this subpart. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(f) If the National Special Asset Council determines that any Special Asset Group is not in substantial compliance with this subpart, the Council will notify the group of the determination, and take such other action as the Council considers necessary to ensure that such group complies with this subpart.

(g) In determining whether a loan is to be restructured, each qualified lender certified under section 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in § 614.4517. The National Special Asset Council is required by statute to consider these same factors.

**§ 614.4521 Participation in State agricultural loan mediation programs.**

(a) If initiated by a borrower, System institutions shall, either concurrently with loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 503(b) 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.

**§ 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 property" 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 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.

(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 property.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired 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 15 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 30 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 15 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 property at a price less than the appraised value, if the offer was received within 15 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 property, or any portion of such real estate, 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 value, within 15 days after the receipt of such offer, and 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 property 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.

(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.

**PART 615 -- FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

8. The authority citation for Part 615 is revised to read as follows:

**Authority:** 12 U.S.C. 2154, 2202(b), 2243, 2252.

**Subpart J -- Prescription, Subscription and Retirement of Stock**

9. Section 615.5255 is amended by adding new paragraphs (e), (f) and (g) to read as follows:

**§ 615.5255 Notice of retirement of capital stock and participation certificates.**

\* \* \* \* \*

(e) If a Federal land bank forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and the Federal land bank shall retire an equal amount of stock owned by the Federal land bank association.

(f) If a production credit association forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(g) Notwithstanding paragraphs (e) and (f) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

**PART 618 -- GENERAL PROVISIONS**

10. The authority citation for Part 618 is revised to read as follows:

**Authority:** 12 U.S.C. 2183, 2200, 2243, 2244, 2252.

**Subpart G -- Releasing Information**

11. Section 618.8310 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

**§ 618.8310 Lists of borrowers and stockholders.**

\* \* \* \* \*

(b)(1) Within 7 days after receipt of a written request by a stockholder, each bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit Bank shall provide a current list of its stockholders to such requesting stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that the stockholder will:

\* \* \* \* \*

12. Section 618.8320 is amended by adding a new paragraph (b)(9) to read as follows:

**§ 618.8320 Data regarding borrowers and loan applicants.**

\* \* \* \* \*

(b) \* \* \*

(9) Any information relating to a loan to a borrower which has been considered for restructuring under § 614.4517 may be provided to the District Special Asset Group, if any, and the National Special Asset Council, upon the request of either of these entities.

\* \* \* \* \*

13. Section 618.8325 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 618.8325 Disclosure of loan documents.**

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the qualified lender have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "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.

(4) "Loan contract" means any written agreement under which a qualified lender lends or agrees to lend funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(5) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his or her signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(6) "Qualified lender" means:

(i) a System institution that makes loans (as defined in paragraph (a)(3) of this section) except a bank for cooperatives; and

(ii) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(b) Each qualified lender shall provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a qualified lender shall provide, as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by such borrower to that qualified lender, and a copy of each appraisal of the borrower's assets made or used by the qualified lender. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

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**Dated:** May 4, 1988.

**David A. Hill,**

Secretary, Farm Credit Administration Board.

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