

State and local officials and private organizations to observe this day with every appropriate ceremony and activity.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-21049

Filed 9-12-88; 2:34 pm]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-129]

Revocation of Varroa Mite Quarantine

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that rescinded the federal quarantine of areas in which Varroa mites had been found, and that removed the restrictions on interstate movement of various articles from those areas. The interim rule was necessary because, while ineffective in preventing the interstate spread of Varroa mites, the Varroa mite regulations were causing economic losses within the agricultural sector. In response to widespread concern about the Varroa mite problem, we are considering convening representatives of interested parties, with whom we would participate in a process known as regulatory negotiation.

EFFECTIVE DATE: September 14, 1988.

FOR FURTHER INFORMATION CONTACT:

Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-438-6365.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1988, we published in the Federal Register (53 FR 16536-16538, Docket No. 88-082) an interim rule that, effective May 6, 1988, rescinded the Varroa mite regulations established in an interim rule published in the April 11,

1988, issue of the Federal Register (53 FR 11825-11830, Docket No. 87-140).

The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees within those hives and reducing their ability to pollinate plants and produce honey. Varroa mites multiply quickly, and a beekeeper may fail to notice that they have infested his or her hives until serious damage has been done. Tests and treatments for Varroa mite-infested honeybees are available, however. Beekeepers with reason to suspect the presence of Varroa mites can avail themselves of those tests and treatments to protect their hives.

The apparent efficacy of those tests and treatments led us to establish federal Varroa mite regulations. However, information received from federal and state officials, beekeepers, growers, and researchers caused us to conclude that the regulatory program effected to contain the interstate spread of Varroa mites was disrupting agricultural operations dependent on the interstate movement of honeybees. We therefore determined that by rescinding the Varroa mite interim rule and working with beekeepers and other affected persons, we would more successfully protect agricultural interests. We determined that corrective action, effective immediately, would prevent the serious economic losses that would occur if, as a result of our regulatory program, honeybees could not be supplied where and when necessary within the United States.

Comments

As stated above, the Animal and Plant Health Inspection Service (APHIS) rescinded the Varroa mite regulations only after determining that the federal quarantine and the restrictions upon interstate movement were not working. Our attempt to contain the interstate spread of Varroa mites in the United States had been premature, implemented on the basis of preliminary research reports and of optimistic assumptions about the availability of personnel and the other resources without which federal regulations could not succeed. When the emergency provisions appeared to be causing more problems than they were solving, we withdrew them.

We invited the submission of written comments in response to our emergency action rescinding the Varroa mite regulations. Of the 35 comments postmarked or received during the public comment period that ended on July 11, 1988, one unequivocally supported the action. All others expressed concern over the action of APHIS rescinding the regulations.

After considering the matter further, we have concluded that the facts presented in the interim rule still provide a basis for rescinding the Varroa mite regulations. However, APHIS is considering proposing new regulations concerning this matter. In this connection, we are considering convening representatives of interested parties, using the process known as regulatory negotiation. Such negotiation could result in new Varroa mite regulations by spring 1989.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For the reasons provided in the interim rule, the Varroa mite regulations were rescinded one month after their implementation. When it became apparent that the regulatory program intended to contain the interstate spread of Varroa mite was not working and was causing economic dislocations, we acted to prevent that unintended effect. No statistics are available, but we believe that in responding to the earliest indications that the Varroa mite regulations were not working as intended, our emergency action had no significant effect on a substantial number of small entities.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agricultural), Quarantine, Transportation, Varroa mites.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 16536-16538 on May 10, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of September 1988.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20890 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 354

[Docket No. 88-136]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing, and adding, commuted traveltime allowances in New York and Vermont. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain

overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: September 14, 1988.

FOR FURTHER INFORMATION CONTACT:

Paul Eggert, Director, National Administrative Planning and Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing, and adding, commuted traveltime allowances between certain locations in New York and Vermont. (The amendments are set forth in the rule portion of this document.) That action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing and adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative Instructions prescribing commuted traveltime.

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Out-side
Remove:			
New York			
Rouses Point (including Champlain).	Rouses Point.	1	
Plattsburgh	Rouses Point.	2	
Ogendsburg	Rouses Point.	5	
Roosevelt	Rouses Point.	4	
Chateaugay (including Churubusco and Cannon Corners).	Rouses Point.	2	
Massena	Rouses Point.	4	
Add:			
Rouses Point (including Champlain).	Rouses Point.	2	
Plattsburgh	Rouses Point.	3	
Ogendsburg	Rouses Point.	6	
Roosevelt	Rouses Point.	5	
Chateaugay (including Churubusco and Cannon Corners).	Rouses Point.	3	
Massena	Rouses Point.	5	
Vermont			
St. Albans (including Highgate Springs and Morses Line).	Rouses Point, NY.	2	
Add:			
St. Albans (including Highgate Springs and Morses Line).	Rouses Point, NY.	3	

Done in Washington, DC, this 8th day of September, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20039 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-34-M

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

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) by action of the Farm Credit Administration Board (Board) adopts and publishes final regulations on borrower rights implementing changes brought about by the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) enacted on January 6, 1988, which amended provisions of the Farm Credit Act of 1971 (the Act). The borrower rights include, among others, procedures for the restructuring of loans from certain Farm Credit System (System) institutions and other "qualified lenders," which have become "distressed loans" as those terms are 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.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of effective date will be published.

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

SUPPLEMENTARY INFORMATION: On May 12, 1988, the FCA published a proposed rule with request for comments (53 FR 16937) to implement the changes in borrower rights that the legislation enacted. In particular, the statute directed System institutions which are "qualified lenders" 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, set forth 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, System institutions are to cooperate in good faith with requests for information or 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.

A public hearing was held on June 8, 1988, and the comment period closed on June 13, 1988. The FCA received 303 comments on the proposed regulations, with some individuals or groups submitting more than one comment letter. Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of its 37-member banks. Additional comments were received from System institutions, numerous individuals, groups representing farmers, legal aid organizations or attorneys, members of Congress, four attorneys general from midwestern States, and other groups. All comments submitted have been considered in drafting the final regulations which are published herein. Comments on sections of the Act concerning areas other than borrower rights, or other written material submitted not commenting on the proposed regulations have not been addressed. Except for the general comments addressed directly below, any changes to the proposed regulations including any comments received on the subject matter are explained below by section within the affected part of 12 CFR. Where commenters addressed issues in one section that FCA felt more appropriately should be discussed in another section, FCA responded to those comments in the section(s) that more appropriately dealt with the issue. If a section number is not referenced, no comments were received.

Response to Comments

General Comments

Many comments were received concerning the direct and indirect costs to the System created by borrower rights. Some System institutions, as well as one individual farmer expressed concern that "good" borrowers or viable farmers are in effect paying for costs incurred on behalf of "bad" or distressed borrowers. There was

concern over the potential for abuse of the provisions because of the costs and delays created by borrower rights, as well as by any overlap these rights may have with bankruptcy and State debtor protection laws. FCA recognizes that there are direct and indirect costs involved and the potential for abuse. However, FCA also recognizes the need for effective implementation of borrower rights. Thus, throughout the regulations, FCA has balanced all of these concerns by implementing the statute as fully and fairly as possible such that all borrowers who are entitled to such rights are protected and afforded their rights without unnecessary costs to the lenders, the System, and all member borrowers.

Comments expressed concern about the perceived inconsistent implementation of borrower rights throughout the System. Specifically, commenters requested FCA require that restructuring policies developed under § 614.4515 be uniform and the content of those policies be dictated by FCA. Also, one comment requested that detailed policies regarding first refusal rights be established. In response to those general comments that FCA should require uniformity in the manner in which all lenders implement borrower rights, to the extent that FCA has adopted final regulations that require qualified lenders to afford borrowers their rights as set out in the statute, there is uniformity. However, FCA sees no need to require each and every qualified lender to carry out each aspect of the borrower rights provisions in the same manner such that FCA is in effect making every day business judgment decisions for the lenders. FCA will not substitute itself for the functions that are to be performed by qualified lenders' management and boards of directors by prescribing every detail of a lender's policies. FCA will, of course, continue to examine the institutions' compliance with these statutory and regulatory criteria.

Farm groups and individuals commented that FCA merely restates the Act in the regulations without providing for more specific guidance. FCA disagrees with this comment in that the borrower rights provisions in the statute offer specific guidelines, and where they do not, the final regulations address these issues. One group commented that FCA merely restates the Act, and thus fails to direct lenders to comply with the statute. However, no such express direction is required, as failure to comply with the statute would be a violation of law. Where the regulations follow the Act, lenders must comply with requirements that are set

out not only in the Act, but in the regulations as well.

One individual recommended that a statement of purpose and responsibility of the System be included in the regulations. One commenter further suggested that the regulations state that the main objectives of the Act are to place the control of the System back into the hands of the family farmers. This individual has apparently misinterpreted the purpose of the borrower rights provisions which is to afford borrowers certain rights as specified in the Act. The "control" of the System need not be addressed in these regulations since borrowers/stockholders already possess the means to "control" the System through the exercise of their voting rights. Since the Act and regulations set forth the borrower rights, and the responsibilities and purpose of System institutions and other qualified lenders concerning the rights, it is not necessary to write a statement of purpose and responsibility in the regulations. (For the policy and objectives concerning the Act itself, see section 1.1 of the Act.)

There were comments from farmers' groups and individuals concerning interaction with the Farmers Home Administration (FmHA) programs. Commenters advocated that System institutions should refrain from taking any action, specifically foreclosure action, until FmHA and FCA regulations are in place. Unless the Act provides otherwise, the new provisions of the statute were effective as of January 6, 1988, and System institutions are required to comply with the requirements of the statute. One comment requested that the regulations instruct the System to use certain procedures of FmHA loan guarantee programs. Section 102 of the 1987 Act states that System institutions should use FmHA loan guarantee programs, as well as other restructuring measures "considering the availability and appropriateness of such programs on a case-by-case basis." Thus, the statute does not require the use of the FmHA programs in every instance, and FCA does not believe that the regulation should.

One comment stated that some borrowers are being informed that they must waive their rights in order to obtain credit. The commenter did not state whether he was referring to the waiver referenced in § 614.4367(b), which is a waiver in connection with the sale of loans in the newly created secondary market. FCA believes that qualified lenders cannot otherwise deny borrowers their statutory rights by

making the waiver of their rights a condition for receiving credit because to do so would render the borrower rights provisions of the statute meaningless. System institutions will be examined to ensure that borrowers are afforded these rights, and FCA may use its supervisory and enforcement powers, where appropriate.

Several comments were received concerning the issue of pending actions or "pipeline loans," i.e., loans upon which foreclosure proceedings may have been initiated, but not completed as of January 6, 1988, the effective date of the legislation. Specifically, comments were received which stated that individuals are entitled to borrower rights if adverse actions and foreclosures were initiated prior to January 6, 1988 or if foreclosures were pending, but not complete prior to January 6, 1988. Some comments suggested that the restructuring provisions in the regulations should be applicable even when the foreclosure process is complete or a lender has received a foreclosure judgment, but the land has not yet been placed into a lender's inventory. A comment was also received from members of Congress stating that the Act intends to extend restructuring rights to *all* borrowers with distressed loans, as long as the foreclosure process is not complete as of the date of enactment of the legislation.

While the issue is not free from doubt, upon a review of the statutory language, the FCA Board has concluded that as long as the foreclosure proceeding as defined in § 4.14A(a)(4) of the Act was not complete as of January 6, 1988, restructuring rights are applicable, if otherwise appropriate. Section 4.14A(b)(3) of the Act and § 614.4519(b) state, "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 * * *." The borrower rights provisions became effective on January 6, 1988, and as of that date, any borrowers with "distressed loans" (as that term is defined in the statute) are entitled to restructuring rights. These include loans subject to a pending foreclosure proceeding, *not yet* complete as of January 6, 1988. FCA cannot define when a foreclosure proceeding is complete because this is a matter of State law. Comments on "pipeline loans" were received concerning rights of first refusal as well. Similarly, FCA believes that if an institution had "acquired property" as that term is defined in § 614.4522, that had not been sold as of January 6, 1988, the previous

owner should be afforded his first refusal rights.

Comments were received that requested that the regulations ensure that the borrower rights provisions are applicable to borrowers who are in the process of bankruptcy proceedings and some commenters requested that the regulations apply to situations where an individual's debts have already been discharged in bankruptcy. FCA believes that the issue of whether these provisions are applicable in a bankruptcy proceeding is a determination for the courts to make and therefore has not included such a provision in the regulations.

Comments were received from FCCA and one Farm Credit Bank (FCB) concerning applicability of other laws and regulations to the restructuring provisions. These comments recommended that the regulations provide that System institutions need not comply with certain other regulations and laws during the restructuring process. The comment from the System institution suggested that the regulations state that when restructuring distressed loans, lenders need not comply with other FCA lending regulations, specifically §§ 614.4140, 614.4150, 614.4180, 614.4190, and 614.4200. FCCA suggested that certain statutory requirements (sections 1.6, 1.8, 1.9 and 2.4 of the Act)¹ should be applicable only to the origination of new loans, but not to the restructuring of distressed loans. The reason offered for the proposed changes is that there is a statutory mandate which requires restructuring of distressed loans when the criteria in the borrowers rights provisions are met, and this mandate should not be conditioned upon other statutory and regulatory requirements. The commenters further argue that if restructured loans must comply with these other statutory and regulatory requirements, some restructuring proposals must be rejected. For example, there may be an instance where the cost of restructuring is less than the cost of foreclosure, but *only if* a System institution is able to restructure a loan beyond the terms prescribed by the Act and regulations. A comment was also received from members of the Congress recommending that institutions be allowed flexibility to restructure loans by not requiring strict

compliance with other statutory and regulatory provisions.

In the context of restructuring distressed loans, FCA believes that stock and collateral requirements, as well as provisions concerning the term of years of a loan which are otherwise applicable when an institution originates a new loan, should not necessarily be applicable in all restructuring situations. System institutions must exercise their business judgment when considering such requirements in a restructuring context in order to enhance the possibility for ultimate repayment of the loan consistent with the borrower's ability to repay. However, if new funds are advanced, all such requirements are applicable. Regarding § 614.4140, *Sound Loan*, § 614.4150, *Credit Factors*, and eligibility requirements, FCA does not believe that these requirements in any way impede loan restructurings. Institutions are still expected to comply with safe and sound practices, and FCA will continue to examine for such compliance.

Numerous comments concerned alleged lenders' noncompliance with the Act. Groups and individuals posed the question of what recourse or procedures are available for individuals who have not and may not in the future be given their rights. One attorney commented that the regulations should provide that an aggrieved borrower has the right to seek the imposition of civil money penalties. Two individuals suggested that FCA should establish procedures to process complaints regarding borrower rights. Specifically, one of these commenters suggested that formalized appeal procedures be established.

Regarding civil money penalties, it is FCA and not private individuals, that determines whether a civil money penalty is appropriate. See § 5.32 of the Act. FCA will continue through its examination process and related enforcement powers to determine whether institutions are complying with applicable laws and regulations, including borrower rights, and, where appropriate, FCA will seek remedial action, including imposition of civil money penalties. As for establishing procedures, since many of the provisions are new, FCA does not believe that establishing procedures is appropriate or necessary at this time.

Some comments suggested that FCA hold several hearings around the country on the borrower rights provisions to allow many individuals the opportunity to comment on the proposed regulations. A public hearing was held in McLean, Virginia at FCA's

headquarters, and FCA does not believe additional hearings at different locations to be necessary, or cost effective. It would not be an efficient use of time or resources to hold multiple hearings around the country. Furthermore, every individual who wanted to comment was able to do so by submitting written comments. Written comments were not given any less consideration than those presented orally at the hearing. (It should be noted that even those individuals who testified were required to submit written comments covering the scope of their oral testimony.)

Finally, many comments requested that the regulations be revised in such ways that would change the statutory language. In most instances, FCA has closely tracked the statutory language in an attempt to carry out Congressional intent. Some additions were made that do not alter the existing language or Congressional intent, but further explain the statutory requirements. Also, the Act refers to "Districts." This language has been changed or deleted as "Districts" may no longer exist after January 6, 1989 pursuant to section 412 of the 1987 Act. Finally, many commenters referred to the technical amendments bill, H.R. 3980 that has since passed. Thus, any appropriate changes have been made.

Comments by Section

Part 614—Loan Policies and Operations Subpart K—Disclosure of Loan Information

The disclosure regulations set forth timely and meaningful loan disclosure requirements that must be made by qualified lenders to prospective and current borrowers such that those individuals may make informed decisions.

Section 614.4365 Applicability.

One comment suggested the addition of the phrase, "except as to those provisions not covered thereby" to the end of this section, thus making the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* (commonly referred to as Truth in Lending Act (TILA)) applicable. FCA does not agree with this suggestion. Section 4.13 of the Act clearly states that the disclosure requirements apply to all loans not subject to TILA. The regulations accordingly comport with the statute. Another commenter suggested that TILA be used as a model for FCA's disclosure requirements. Where appropriate, FCA used TILA as a guide. For example, the definition of "loan origination charges" is based on similar terms used in the regulations that implement TILA.

¹ These sections cited by FCCA are applicable to Federal Intermediate Credit Banks (FICBs) or Federal Land Banks (FLBs) under the Act before the 1987 revisions. These statutory requirements are now found in §§ 1.7, 1.9 and 1.10 and are applicable to Farm Credit Banks (FCBs), and in the case of § 2.4, to production credit associations (PCAs).

Section 614.4366 Definitions.

A few comments suggested that the "effective interest rate" should be the same as the "fixed rate." The rates are not and cannot be the same as is explained by the definitions. The effective rate is an interest rate, either fixed or variable, which takes into consideration the amount of stock purchased, loan origination charges, and other applicable factors, as further defined in § 614.4366(b).

FCCA commented that "as a percentage of the initial net proceeds of the loan" should be deleted since it may no longer be appropriate after the new capitalization bylaws are adopted pursuant to section 4.3A(c)(1) (E) and (H) of the 1987 Act. FCA agrees and the regulation has been changed accordingly.

A few comments stated that the definition of a loan was not clear. Specifically, the following questions were posed: "Is a 'loan' a loan contract renegotiated in restructuring for the purpose of disclosure?"; "When does a loan application become a loan for secondary market pooling purposes?"; and "Is a 'commitment' created at the time of execution of a loan contract, but before closing?"

In general, the definition of a "loan" is provided in section 4.14A(a)(5) of the Act and FCA believes no further clarification is necessary. Regarding the specific comments, FCA addresses these herein. FCA is unable to determine in all restructuring circumstances whether a new loan is created because such cases depend on how the lender actually implements the restructuring. If a "new loan" is created, then the disclosure requirements are applicable. Regarding the secondary market issue, the definition of a "loan" is used in this section for the purpose of determining what disclosures need to be made. Thus, FCA need not address, in these regulations, the legal issue of at what point in time a loan exists since § 614.4367(b) states at what time disclosures must be made regarding loans that will or may be pooled. However, for purposes of the disclosures, the issue of when a "commitment" becomes a loan is not relevant since again the regulations specify when the disclosures must be made. Section 614.4367(a) states that disclosures must be made pursuant to this section "not later than the time of loan closing."

Finally, one commenter stated that the definition of "standard adjustment factors" is vague because he did not know what "typically taken into consideration" means. FCA believes

that the definition is clear. It means those factors (and more than those listed in the definition may exist) ordinarily considered in adjusting the interest rate, according to loan pricing policies established by the individual institution.

Section 614.4367 Required disclosures—in general.

A number of comments requested that more information be disclosed. Those comments that requested that specific information be disclosed are discussed below. One comment made the general statement that more information should be disclosed without specifying what information. On the other hand, a few lenders commented that there is a difference between complete disclosure and unnecessary disclosure. FCA agrees and has attempted not to require unnecessary disclosure while simultaneously assuring that borrowers receive complete, timely, and meaningful disclosure of the information that they need in order to make informed credit decisions.

One comment suggested that lenders clearly explain all billings made in connection with a loan. Although FCA agrees that this is good business practice, FCA does not believe that it is appropriate to include this in the disclosure regulations. The statute clearly states what type of information should be disclosed and billings are not included in that information. Another comment suggested that the availability of the loan review process should be publicized. FCA assumes that this commenter was referring to the disclosure requirements of § 614.4368 and this is discussed below in that section. To the extent that the comment might have been referring to the credit review committee process, those disclosures are required under §§ 614.4441 and 614.4518.

One individual suggested that each lender develop a glossary of terms used in normal operations, including disclosures and loan restructurings, and that the glossary be made available to every stockholder. FCA does not believe this is necessary since words and terms are adequately defined not only in Subpart K in § 614.4366, but also in Subparts L and N in §§ 614.4440 and 614.4512. One comment also suggested that a citation to TILA be added as a disclosure requirement. FCA disagrees for the reasons explained in the discussion on TILA in § 614.4365.

Section 614.4367(a) Disclosures at loan closing.

FCCA recommended that "protected" be substituted for "guaranteed" in

§ 614.4367(a)(4) and similarly in Model Form No. 1 because although section 4.13(a)(5) of the Act uses the term "guaranteed," that term is not reflective of the true status of eligible borrower stock under section 4.9A of the Act. The comment also pointed out that "guaranteed" is not used anywhere in section 4.9A. Section 4.9A refers to "eligible borrower stock" and FCA has changed the regulation to use this term instead of either "protected" or "guaranteed."

Some comments suggested that FCA should specify in § 614.4367(a)(5) the various types of loan options with explanations of terms which farmers can use to enable them to make decisions. Since individual lenders offer different loan options, some of which may be distinctive to one lender, and since each FCB has its own policies and loan options, FCA does not believe it appropriate to further define "loan options."

One individual commented that he had a "fixed rate loan" and that despite this fact, changes in the rate were made that were not previously disclosed. Pursuant to § 614.4367(a)(2), if a rate is adjustable, the lender must make the requisite disclosures. However, the borrower should be aware of the fact that the effective interest rate on "fixed rate loans" may be subject to change (see § 614.4366(c)), and that disclosure concerning the effective interest rate must be made pursuant to § 614.4367(a)(3).

Section 614.4367(b) Disclosures for loans that may be pooled.

FCCA asserted that the requirement in § 614.4367(b)(2) for a borrower to execute a waiver of restructuring rights if his loan will be pooled goes beyond the requirements of the statute. FCCA suggested that no waiver be required, and that alternatively if one is required that it be within 3 days of commitment to coincide with the notification requirement of § 614.4367(b)(4). FCCA's rationale to eliminate the waiver requirement is that it adds to an institution's paperwork and therefore inhibits the System's ability to compete in the secondary market. FCCA further argues that if a waiver is required it should coincide with the 3-day notification requirement of § 614.4367(b)(4) because as the proposed regulation is now written, a borrower may allow his loan to be pooled within 3 days of commitment, but may change his mind at the time of loan closing. Since pooled and non-pooled loans may have different terms, for a lender not to know until closing whether a loan will be

pooled makes it difficult, if not impossible, to have properly prepared loan documents at the time of closing. Furthermore, FCCA asserted that if a lender does not know the status of the loan until closing, it may make it more difficult to plan for and package secondary market loans. Borrowers commented that the waiver requirement should be deleted because borrowers should never have to waive their rights.

FCA disagrees with FCCA and the borrowers that the waiver requirement should be deleted. FCA believes that FCCA and the borrowers who commented on this issue may have misunderstood the purpose of the waiver requirement. The waiver requirement actually operates as a protection for lenders, as well as borrowers. Pursuant to section 8.9 of the Act, if a loan is pooled, restructuring rights do not apply. By requiring a waiver, the borrower must be made fully aware of the fact that restructuring rights are not applicable and the lender and borrower have demonstrated that they clearly understand that these rights are not applicable. For this reason, although FCA understands that a small amount of additional paperwork is created for the lenders, FCA believes that the waiver requirement is necessary so that borrowers and lenders are assured of notification of the consequences of loan pooling. However, FCA agrees with FCCA that the waiver should coincide with the 3-day requirement and the final regulation has been amended to reflect this change.

Some farmer groups suggested that a model form for the waiver should be included in the regulations and used by all lenders for consistency. The requirements of § 614.4367(b)(2) are fairly simple, straightforward and limited in nature such that FCA does not believe that a model form is required. A few comments from borrower groups suggested that prior to signing a waiver, borrowers should be provided with an explanation of all of their rights associated with restructuring. Section 8.9 of the Act provides that the notice shall inform the applicant that if a loan is pooled, sections 4.14, 4.14A, 4.14B, 4.14C, and 4.37 shall not apply. Thus, FCA agrees that the notification must explain that these sections of the statute will not apply. The regulation has been revised accordingly.

Section 614.4367(c) Changes in interest rates.

A few comments suggested that the phrase "other than standard adjustment factors" be deleted in § 614.4367(c)(3), thus making the regulation require disclosure of these factors 10 days

before the effective date of an increase. One comment suggested the following specific language: "Such notice shall include the amount of each of the standard adjustment factors and any other factors used to compute the new rate." FCA believes this to be a redundant requirement and accordingly, the proposed language has not been adopted. Section 614.4367(a)(2)(ii) requires disclosure of these factors no later than the time of loan closing. Thus, FCA believes it is unnecessary to require this disclosure again, 10 days before the effective date of an increase.

Some comments suggested that all such "factors" should be listed in the regulation. FCA does not believe such a list is necessary or practical. The regulation requires disclosure of "any" factors, thus it is unnecessary to list all the possible factors. Furthermore, since the factors may be different depending on the lender, situation, and other factors, it would be of little value for FCA to attempt to compile a list.

Many comments were submitted concerning the requirement for notification of a rate increase 10 days before the effective date of the increase. Some borrower groups and individuals suggested that the notification be made 30 days in advance so that individuals have sufficient time to explore other alternatives. FCCA suggests that the notification requirement for increases be the same as for decreases, i.e., no later than the effective date of the increase. FCCA asserts by way of example, that if an interest rate is increased effective on July 1, on a loan with a monthly repayment schedule, the borrower will not have to pay the increased amount until August 1. Although FCCA recognizes that interest is accruing at the new rate for the 30-day period preceding the August 1 payment date, FCCA asserts that the borrower would still be given 30 days within which to seek alternative financing. FCCA further states that presently the proposed regulation gives the borrower 40 days to seek refinancing and that while the 10-day difference is not significant to the borrower, it is to the lender because of the additional burden to the lender. FCCA argues further that the Federal Reserve Board (FRB), which vigilantly oversees consumer lending, is more flexible on this issue than the FCA. Even if FCA does not eliminate the 10-day requirement in general, FCCA argues that FCA ought to waive it if: (1) Lenders make loans tied to an index entirely outside the control of the System, (2) the index is widely publicized and generally accepted throughout the business and agricultural community, and (3)

disclosures clearly referencing a prime rate or other index are made when the loan is originated and closed. FCCA argues that since changes in the prime rate, for example, are largely unpredictable and outside the control of the lender, the proposed regulations as written are not compatible with such pricing methodology and that Congress could not have intended that the disclosure requirements impede such pricing practices as evidenced by the fact that the 10-day requirement is not found in section 4.13 of the Act.

Although timely, meaningful disclosure is required, FCA must also balance the costs to the lenders of disclosure requirements. If the disclosure regulations are so strict that System institutions have difficulty competing with other lenders, then the entire System suffers, including, ultimately, the borrowers. FCA recognizes that the 10-day requirement is an added burden to the lender, but it also recognizes that the 10-day time period is significant to the borrower. The purpose of the disclosure regulations is to inform borrowers of certain information so that they have sufficient time to make informed decisions and exercise options that may be available to them. Furthermore, the comments received by FCA from borrowers requesting 30-day as opposed to 10-day advance notification indicate that the period is of significance to borrowers. FCA is not persuaded by FCCA's reference to the FRB since the System is in some ways unique and cannot be compared to other financial systems. Furthermore, the FRB disclosure requirements that FCCA referred to provide for disclosure of an interest rate increase subsequent to the increase, but only in very limited circumstances. On the other hand, FCA is not persuaded that the suggested 30-day time period advocated by borrowers is practical. This long a period would impose too great a burden on the lenders who are not always able to determine that far in advance when an increase will be necessary and the costs to them in potential lost revenues for that 30-day period may be significant. On balance, FCA believes that the 10-day requirement does not impose too great a burden on the lenders and that it is an adequate amount of time for borrowers to evaluate the effect of the increase and take whatever action they feel is necessary. Comments were also received that suggested that a 30-day requirement be added to § 614.4367(d), as well. For the reasons discussed above, FCA does not agree and the regulation has not been changed. In

response to FCCA's comments advocating that notifications of rate increases tied to indexes such as prime rates be provided at the time of the increase and not 10 days before, FCA believes that the theory behind the 10-day advance notice to allow borrowers to timely explore other options available to them is equally applicable in these instances.

Section 614.4367(e) Notice requirements.

Commenters suggested that paragraph (e) of § 614.4367 be changed to require notification to all parties. The reason offered for this recommended change is that all primary obligors are entitled to such disclosures and there may be situations (e.g. during divorce proceedings) where all primary obligors will not have access to the information. Although FCA agrees that all primary obligors should have access to the information, it does not agree that lenders should be responsible for notifying every obligor. Each primary obligor is responsible for ensuring that he is fully informed by other primary obligors. FCA does not think it is appropriate to create unnecessary costs or responsibilities and this further notification would be such a cost and responsibility.

Appendix to 12 CFR 614.4367—Required disclosure—model disclosure forms.

It was suggested that the model forms should be patterned after TILA. With some minor changes explained below, FCA believes that the proposed forms are adequate to give lenders an idea of how disclosures may be made. It was also suggested that the forms be more specific and that their use be mandatory. FCA does not believe that the forms need to be more specific since the purpose of the forms is to give lenders an example of the type of form that is appropriate. Furthermore, FCA does not believe that the forms must be mandatory. The use of the model forms is optional as long as lenders make the requisite disclosures.

One lender found a conflict between the language of § 614.4367(a)(3) and the model form. The lender commented that the text of the regulation seems to require disclosures using representative examples rather than loan-by-loan calculations while the model form requires only the latter. The commenter asked for clarification on which FCA was requiring. FCA requires both. Section 4.13(a)(3) of the Act clearly requires the use of at least one representative example when disclosing the effect that loan origination charges or stock or participation certificate

purchases have on the effective interest rate. Thus, the initial disclosure of the effective interest rate should take into account the required purchase of stock or participation certificate and loan origination charges at the time of loan closing, if not before. In addition, at least one further disclosure is required which states what the effective interest rate would be if there were a change in the purchase requirement as it relates to the loan balance. Thus, the model form has been changed to reflect this.

One lender commented that although Model Form No. 2 requires disclosure of the effective interest rate, § 614.4367(c) does not. Although § 614.4367(d) addresses the effective interest rate, FCA recognizes that the lender's comment concerning § 614.4367(c) is appropriate and the final regulation will be changed to reference the effective interest rate, as well. Finally, the model forms have been amended to refer to "qualified lenders" rather than "System institutions."

Section 614.4368 Disclosure of differential interest rates.

A farmers group suggested that lenders provide a one-time communication to "non-troubled" borrowers on their rights to a review of their loan. FCA believes that a notification should be provided to borrowers and has revised the regulation to require notification to prospective borrowers not later than the time of loan closing. This notification may be made at the same time as the disclosures required by § 614.4367(a). Regarding current borrowers, lenders should notify them of their rights under this section at the time that they notify them of the next rate change. The same group also suggested that the regulation require that the lender respond to the borrower within 45 days. FCA does not see a substantial benefit to this suggestion, especially since the borrower would have been notified of the interest rate that he would be receiving no later than loan closing.

Subpart L—Actions on Applications; Review of Credit Decisions

Subpart L sets forth definitions and the processes to be used in reviews of credit decisions.

Section 614.4440 Definitions.

One commenter suggested that a glossary of terms should be developed Systemwide and made available to every borrower. Although such a glossary may be beneficial, FCA believes that the decision to develop such a glossary should be within the lender's discretion.

One farmers group commented that "borrower" should be defined to include a person who holds System collateral, has System debt and/or holds System stock. The borrower rights provisions are applicable to "loans" from "qualified lenders" as these terms are defined by the statute, and the regulations so provide. The definition of a loan is a "loan made to a farmer, rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and other credit need of the borrower * * *." Since the definition of "loan" clearly indicates the individuals covered by the borrower rights provisions, no further definition of borrower is required.

Section 614.4440(a) Adverse credit decision.

Farmers groups suggested that "adverse credit decision" should be expanded. Definitions were suggested that would include the following as "adverse credit decisions": A denial of a formal application for reduced interest rates, an increase in interest rates, and the classification of a loan as "nondistressed" and therefore not entitled to be considered for restructuring. The statute clearly defines those decisions that credit review committees should consider. The statute provides for review of the following adverse credit decisions: Denials of credit; approval of credit but in a lesser amount than that applied for; denials of restructuring applications; and denials of requests to return a nonaccrual loan to accrual status, but only for borrowers who were not delinquent at the time of such action and only if an adverse action resulted from the change in status. Thus, the statute does not allow for expansion of the definition of "adverse credit decision" as suggested by the farmers groups. The FCCA suggested that "adverse credit decision" be changed to limit reviews of a denial of a request to return a loan to accrual status to conform to the requirements set out in § 614.4514 and 4.14 D(d)(2) of the Act, i.e., such review would only be available to borrowers who have met all loan obligations and only if placing a loan in nonaccrual status results in an adverse action. The proposed regulation was intended only to provide a review of the denial to return a nonaccrual loan to accrual status for those borrowers who meet all loan obligations when the change in status results in an adverse action. However, as FCCA points out, proposed § 614.4440 could be interpreted to give all borrowers in all instances the right to this review. Therefore, the definition of applicant in the final

regulation has been adjusted accordingly, and § 614.4514 *Borrowers who meet all Loan Obligations* will be clarified to reference § 614.4441 *Notice of Action on Loan Application*, as well as § 614.4443 *Review Process*, making those sections applicable to the review of a denial for a request to return a nonaccrual loan to an accrual status when there is an adverse action. Again, this would clarify that such reviews apply to denials of credit; denials of restructuring applications; and denials of requests to return a nonaccrual loan to accrual status, but only for borrowers who were not delinquent at the time of such action and only if an adverse action resulted from the change in status.

Section 614.4440(c) Application for restructuring.

One comment suggested that the regulation require that loan officers provide a written copy of the restructuring policy to the borrower, that a borrower request restructuring in writing, and that a "casual comment" by a System institution not constitute proper notification of restructuring rights. Section 614.4516 requires that a copy of a lender's written policy be provided to the borrower and § 614.4440(c) defines an "application for restructuring" as a *written* request. "Casual comments" by lenders would not comply with the formal written notifications required by the regulations.

Farmers groups and individuals requested more specifics on what type of information is required to be provided in an "application for restructuring." One group suggested that the definition be expanded, as well as clarified to create uniform, consistent procedures. Another comment suggested that the definition needs to emphasize that the lender and borrower should work together, negotiate and put forth a good faith effort.

Most comments were concerned specifically with the "preliminary restructuring plan." Commenters requested that the "preliminary restructuring plan" be clearly defined as well, and that the regulations specifically state what type of information must be provided by the borrower by requiring that the lender furnish a list of all the financial information and repayment projections that the lender will use to make its decision. Another commenter in asking for clarification of a "preliminary restructuring plan", wanted to know how much information constitutes a good faith application for restructuring.

A few farmer groups suggested that to emphasize and clarify "preliminary", the

regulations should state that a borrower can always amend his plan and that the borrowers should be informed by the lenders of the costs of foreclosure and restructuring at a meeting. Another suggestion was made that the regulations specify stages and timelines for the preliminary restructuring phase. One member of Congress suggested that the regulations need to stress that submission of an application for restructuring is a "preliminary" document in that the law intends to give borrowers the ability to submit a plan which would be considered as a starting point for working out the loan with a lender. Further, the comment suggested that it must be made clear that the lenders have to work with the borrowers.

Four State attorneys general expounded on the suggestion that the costs of foreclosure and restructuring be disclosed to borrowers by suggesting that the computational steps and assumptions used to arrive at the costs be provided. However, unlike most of the other comments, they were of the opinion that detailed regulations governing every possible calculations were not the solution. Rather, they opined that the better solution is for FCA to develop a process which would provide for disclosure and good faith bargaining.

One lender suggested that a definition of "loan application" or "application for a loan" be inserted in § 614.4440, as well as § 614.4512 to clarify the distinction between an "application for restructuring" and a "loan application". The lender stated that § 614.4441(c), which sets a 30-day time limit in which an applicant must request a review, may be interpreted to apply to restructuring applications, as well as to loan applications. However, as the lender pointed out, the time period in which an applicant must request a review of a restructuring application is 7 days after receipt of the lender's notice, not 30 days as may be inferred by § 614.4441(c) of the proposed regulations. The lender also stated that the duplication of "application for restructuring", "distressed loan", and other terms in § 614.4512 as well as in § 614.4440 is not necessary. Finally, FCCA commented that the word "normally" should be deleted from § 614.4440(c)(3), as well as from § 614.4512(a)(3) to conform to the statute and to avoid needless confusion and uncertainty. FCCA reasons that to the extent that "normally" would limit a lender's inquiry to information appropriate for making sound credit decisions in the context of restructuring, it is redundant. FCCA further argues that to the extent that "normally" might

be read to prohibit a qualified lender from obtaining information necessary to make a decision, it conflicts with the statute.

FCA does not believe it is appropriate to change the definition of "application for restructuring" for the following reasons. FCA agrees that the borrower and lender must work together in this process. However, no specific language was suggested on this point, and FCA believes that none needs to be inserted into this regulation since it requires cooperation between borrower and lender. The regulation requires: (1) A preliminary restructuring plan that is not finalized, but proposed, (2) the restructuring application must be submitted on appropriate forms prescribed by the lender, and (3) there must be sufficient information and repayment projections, where appropriate, to allow a lender to support a decision. Therefore, the preliminary plan may be revised before it becomes final, based, in part, on communications between borrower and lender. Also, where information is not sufficient to allow the lender to support a sound credit decision, the lender must communicate with the borrower such that the borrower provides sufficient information to enable the lender to make a sound credit decision. A reading of the statute and regulation, indicates that both parties must put forth a good faith effort and work together.

FCA disagrees with those comments that requested a list of specific information that must be included in the application. The regulations already prescribe what must be included in the application (as discussed in this section) and require that the lender provide "all materials necessary to enable the borrower to submit an application for restructuring" (see § 614.4516(a)(2)). However, specific items other than these requirements cannot be identified and accordingly the regulation cannot prescribe such items. Each restructuring application will be different, depending on the type of loan, borrower, lender, and other factors. The information that constitutes a "good faith application" may very well be different in each case and FCA cannot provide an exhaustive list of specifics. For these reasons, FCA should not and cannot create uniform, consistent procedures. Similarly, the regulations cannot specify stages and timelines for the preliminary restructuring phase, because this may be different depending on the circumstances.

FCA does not agree that a "preliminary" plan should allow a borrower to continually amend his plan

in every instance. There must be a good faith effort on the borrower's part, just as there must be good faith on the lender's part. As with any process, reasonableness must be a guide. The borrower cannot unnecessarily delay restructuring or foreclosure by continually amending his plan, and as discussed below, a lender cannot create unnecessary delays and obstacles to restructuring by unreasonably requiring unnecessary documents as part of the application.

FCA disagrees with the comments that requested that the lender provide the costs of foreclosure and restructuring. In most cases this will be impossible for a lender to do until and after the borrower has submitted an application for restructuring. To the extent that this comment meant that a specific list of what the lender is including in these costs should be provided, as stated immediately above each case may involve different costs. Thus there is no one list of items that objectively will be part of each and every application. FCA agrees with the comment from the State attorneys general suggesting that a process, not a detailed list is the solution. As explained immediately below, the regulations provide for such a process. (FCA has further addressed this issue of the lender providing information to the borrower, but *after the decision* is made, in the discussion in § 614.4518 *Notice of Denial of Restructuring and Right to Review*.)

Although FCA agrees with the comment that the language of the statute gives the borrower the ability to submit a plan which may be considered as a starting point for working out the loan with a lender, it does not agree that this means that a restructuring application is a preliminary document. The language found in the 1987 Act clearly makes a distinction between an "application for restructuring" and a "preliminary restructuring plan." The preliminary plan is a part of the application and while the plan may in some cases serve as a starting point, the application must be in a more finalized form. The application must contain sufficient financial information and repayment projections to allow the lender to make a sound credit decision. Where that information is not provided, the lender must contact the borrower to obtain that information to enable the lender to make a sound credit decision. The lender cannot summarily dismiss an application because it is incomplete. However, FCA does not mean to suggest that the lender should continue to deal with a recalcitrant borrower, such that a

lender is unable to take any action concerning the distressed loan. Once again a reasonableness standard must be applied.

FCA acknowledges that the comment concerning what is applicable to a loan application, as opposed to a restructuring application expressed valid concerns. Accordingly, FCA has included a definition of "loan application" and revised the regulation to clarify that § 614.4441 applies to a loan applicant, not a restructuring applicant. Thus, a loan applicant has 30 days from notification in which to request a review and as stated in § 614.4518, an applicant for restructuring has 7 days from notification in which to request a review. FCA does not agree that duplication of the definitions in §§ 614.4440 and 614.4512 creates confusion. Since most sections in Subpart L are applicable to restructuring applications, as well as loan applications, the definitions must appear in both subparts.

Finally, regarding FCCA's comment that "normally" should be deleted from the regulations, FCA did not intend its insertion to limit the lender from requesting information necessary to make its decision. Thus, "normally" will be deleted. However, this deletion does not mean that a lender may seek more information upon which to base a sound credit decision than it would usually need in the ordinary course of business. The lender may not make unreasonable, or unusual demands for information from the borrower.

Section 614.4440(e) Distressed loan.

One commenter suggested that the regulations should require a lender to notify a borrower in writing when a loan becomes distressed and that the borrower should have an opportunity to discuss the status of the loan. One comment suggested that this notification be provided at least 45 days after a payment is missed. FCA does not believe it is necessary for a lender to notify a borrower when his loan is distressed since § 614.4516 *Restructuring Procedures*, requires a lender to notify a borrower that his loan may be suitable for restructuring and this must be done not later than 45 days before foreclosure proceedings begin. In order for a lender to notify a borrower of the restructuring process, a determination must first be made that the loan is distressed. Thus, a borrower will know that the loan is distressed when the notification concerning restructuring is received. In addition, one of the characteristics of a distressed loan will usually be that the loan is delinquent, and the borrower will be

aware that his own loan payment is past due. In any event, FCA does not believe that a borrower is prejudiced if he is not first notified that a loan is distressed, as long as there is timely notification of restructuring rights. In response to the comment requesting that the regulation provide for an opportunity for the borrower to discuss the status of his distressed loan, FCA does not believe that § 614.4440(e) must require this because FCA cannot conceive of a situation whereby a loan has become distressed and there is no discussion between lender and borrower at some point in time. In any event, § 614.4516 provides the borrower with an opportunity to review the status of a distressed loan.

Comments were submitted requesting that the regulations clarify the definition of a "distressed loan". Two separate issues were raised. The first issue was raised by FCCA in its comments on FCA's receivership and conservatorship regulations, 12 CFR Part 611 (53 FR 16934, May 12, 1988). FCCA questioned whether loans sold by a receiver to entities that are not qualified lenders, would be subject to borrower rights. The second issue concerns whether adverse repayment trends on other than System loans may be considered by an institution when determining whether the loan held by the institution is distressed. In response to FCCA's inquiry, there is no need to address this issue in the context of the borrower rights regulations. In the context of fulfilling its duties established pursuant to the receivership provisions in the Act, FCA determined that borrower rights are applicable to loans that may be sold by the receiver for the former System institutions to entities that are not qualified lenders.

Regarding the second issue of whether lenders may consider adverse repayment trends on other than System loans, the definition of distressed loan must be examined. The definition states, among other things, that a "distressed loan" is "a loan for which the borrower does not have the financial capacity, 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 * * *." The lender must determine whether the borrower has the financial capacity to repay his loan. In order to make such a determination, a lender may have to consider repayment trends on other loans or accounts, where such information is available.

Some comments suggest that "as determined by the lender" be deleted

from § 614.4440(d) as commenters argued that the phrase narrows the statutory definition by prohibiting the borrower from initiating contact with the lender if the borrower thinks that he will be unable to meet upcoming payments even before the lender is aware that a distressed loan may exist. One comment suggested that "as determined by the lender" be deleted, thus prohibiting a policy of one lender that does not consider a loan to be "distressed" if the borrower is able to pay, but chooses not to. In response to the first comment, FCA does not believe that the phrase narrows the statute. Nothing in the statute or the regulations prevents a borrower from voluntarily contacting a lender if a borrower wishes to discuss restructuring. Also, § 614.4516(c) of the regulation states that a qualified lender may voluntarily propose a restructuring plan. In response to the second comment, FCA believes that the statutory framework does not contemplate extending restructuring rights to an individual who although able to pay has chosen not to. To allow otherwise would be to send a message to all System borrowers that they need not be concerned with repaying their System loans. This would be an unjustified burden for all paying borrowers, including those paying under restructuring plans. The legislation is intended to assist those borrowers with financial difficulties, not those seeking to renegotiate or avoid contractual obligations for their own convenience and benefit.

Section 614.4440(g) Qualified lender.

One comment suggested that "qualified lender" was vague, but offered no alternative or additional language to clarify the alleged vagueness. As the regulatory definition is consistent with the statutory definition, FCA does not believe further clarification is needed.

FCA was questioned as to whether an institution that is placed in receivership or conservatorship is itself a "qualified lender." One commenter suggested that the question be answered affirmatively by adding the following language to § 614.4440(f)(1): "including its conservator or receiver." For the System institutions that were recently placed into receivership, FCA determined that the receiver must afford borrower rights.

A member of Congress commented on the definition of qualified lender under § 614.4512 concerning Federal Intermediate Credit Banks (FICBs). The definition of qualified lender includes any institution that "makes loans" as "loans" are defined in the Act.

Section 614.4440(h) Restructure or restructuring.

Comments suggested that the borrower and lender must use the same definition of "financially viable." One comment questioned what actions must be taken to be considered "financially viable", and what does "the taking of any other action" mean. However, no specific language was suggested by the commenters to define these terms and FCA does not believe that specific language is appropriate since financial viability as well as other actions that may be taken to modify the terms of a loan must be determined on a case-by-case basis.

Section 614.4441 Notice of action on loan application.

One comment suggested that FCA prescribe a certain notice or form for the notice for all lenders. As long as lenders provide the information required by this regulation, FCA believes that the form of the notice is within a lender's discretion.

One comment suggested that more information be provided to borrowers before any adverse action is taken. With some minor exceptions discussed below, FCA believes that the notice is adequate as prescribed by the regulations. One comment suggested that the lender notify the borrower of his right to an independent appraisal and the method and procedures of exercising this right. FCA agrees and has revised the regulation accordingly.

Regarding paragraph (a) which requires that the borrower be notified of the reasons for the lender's action, one comment suggested that "tangible" reasons be provided. The remainder of the comments on this issue suggested that all factors, calculations, assumptions, and reasons upon which the lender's decision is based be provided to the borrower. One comment suggested that all factors and calculations be provided only if the lender denies the application to enable a borrower to decide whether he would like to seek review of the decision.

FCA believes that *specific* reasons for a lender's decision on a loan application must be provided to the borrower and the regulation has been revised accordingly. Specific reasons will enable a borrower to decide whether to seek review. FCA agrees with the comment that suggested that such information need only be disclosed when there has been a denial of the application and the regulation so provides. Finally, one comment suggested that notice be given to all primary obligors. For the reasons

discussed above in § 614.4367(e), FCA disagrees.

Section 614.4442 Credit Review Committee.

One comment suggested the title of this section be Credit Loan Review Committee. FCA disagrees since pursuant to section 4.14(b) of the Act, the committee will review denials of restructuring applications, as well as loan applications.

A comment suggested that all avenues should be explored with the loan officer before the committee process begins. FCA agrees with this comment since there is no right to a credit review until the institution has first made a decision. Thus, the lender, usually through the loan officer, and the borrower were engaged in a cooperative effort to attempt to find solutions before the credit review committee process began.

General comments were submitted that suggested the regulations should clearly spell out the function and procedures of the committee, emphasizing the importance of the committee being an independent review process and more than a mere "rubber stamp". Included in these procedures should be guidelines of eligibility for serving on the committee, including those individuals who are to constitute "farmer board representation" as required by section 4.14(a)(1) of the Act.

The FCA does not believe that it should specify additional functions and procedures for the credit review committees other than those prescribed by the regulation. The regulation states that the function of the committee is to review adverse credit decisions. This function is prescribed by section 4.14 of the Act and FCA is not persuaded that the regulation should require functions other than those in the Act. As long as those committees function as required by statute and regulation, FCA believes that each lender is entitled to develop its own set of procedures. The statute and regulations provide for adequate safeguards, including that the loan officer involved in the adverse credit decision being reviewed is prohibited from serving on the committee. Also, § 614.4444 requires that records of the committee be kept and these records will be used, by FCA examiners to determine whether the committee is functioning properly.

One comment suggested that the borrower should receive written notice about his right to appear in person and about what documentation will be considered. Section 614.4441 requires notification of the right to appear and an explanation of the process, which

includes the ability to present documents to support information contained in the unsuccessful application, as provided in § 614.4443(b). One comment suggested that the lender notify the borrower of what documents he or she may submit to ensure that new plans or documents are not submitted which do not address the original decision. The commenter requested that FCA emphasize that this is a review process and not an opportunity for the borrower to bring up new issues. FCA believes that the regulation clearly indicates that this is a review process and is not persuaded that the regulation needs to be revised.

Many comments were received on the role of the loan officer. The same comment was received from many individuals suggesting that the credit review committee should not be allowed to influence a loan officer's decision. Other comments suggested the converse, i.e. that the loan officer not be allowed to influence the committee. Comments suggested that the loan officer's role as it relates to the committee should be clearly defined to be a minimal one and that more guidance should be given on what it means to "serve" on a committee. One comment from a member of Congress suggested that since section 4.14(a)(2) of the Act prohibits a loan officer involved in the initial decision from serving on the committee, that officer should not be present during the review, voice any opinion before the committee, or participate in the committee review process in any way. A lender responded to this comment by suggesting that "appearing" before the committee is not the equivalent of "serving" on the committee. The lender stated that a loan officer should be able to present information and answer questions before the committee, but should not "serve" by deliberating on and voting with the committee.

The loan officer's role should be determined by the credit review committee or the lender, as long as the officer does not *serve* on the committee. The statute prohibits "*serving*" on the committee when it reviews a loan on which the officer made the initial decision, not *participation* on the committee and it would be unreasonable to define "serve" as broadly as suggested by the Congressman's comment. The credit review committee must make informed decisions, and in order to do so it is reasonable to assume that it will need to be informed by the one person most knowledgeable on the lender's decision, i.e. the loan officer. Thus, it would not be inappropriate for

the loan officer to be at the review to present the reasons for the lender's decision or to answer any questions that the committee may have. The only prohibition is that the loan officer may not "serve" on the committee, by being present or participating during the committee's ultimate deliberations, voting, or final decision-making process.

Many comments were received on eligibility for membership on the committee. Comments suggested the following: That a farmer should be on the committee, that a farmer should be on the committee to ensure stockholder control, that a borrower's representative should sit on the committee, that a borrower should be able to choose an impartial committee member, that the borrower should be able to refuse any individual who worked with the borrower in any "adverse" situation in the past, that the borrower should be able to refuse at least one member if the borrower can show bias, that the borrower should be able to refuse a member "for cause", and that a borrower should be able to refuse a member under any circumstances. In addition, there were many comments on the requirement for a director to serve as a member, which are discussed immediately below.

Regarding the requirement for a farmer on the committee, there is a requirement for "farmer board representation" in the statute. At the outset, FCA must clarify that a strict reading of this statutory requirement would be incorrect. FCA previously considered this issue (51 FR 39486, October 28, 1986) and expressed the opinion that the term "farmer board representation" means that in order for a person to serve on an institution's board that person must be a farmer, rancher, or producer or harvester of aquatic products. There have not been any statutory changes that would cause FCA to revise its position. Thus, FCA reiterates this position and states that whenever the term "farmer representation" is used, FCA is referring to farmer, rancher, or producer or harvester of aquatic products.

In response to those comments advocating farmer representation, the FCA has required farmer representation in the regulations. System institutions' boards are elected by the stockholders, who must be farmers, ranchers, and producers or harvesters of aquatic products. One of these board members must sit on the committee and if the stockholders are not satisfied that there is adequate "farmer representation", then the stockholders may remedy this situation during the next board

elections, by electing a board that will better serve the stockholder/borrower interests. (There may be some qualified lenders that are not System institutions, i.e. "other financial institutions" (OFIs) as described in section 2.3(a) of the Act. These are discussed below concerning the credit review committee and its composition.)

All of the other suggestions concerning the composition of the committee seem to be based on the concern that the borrower will not have adequate representation on the committee, and thus not receive a fair review. However, FCA does not believe this to be a valid concern. The review process adequately ensures that a borrower will receive a fair review. A borrower may be accompanied by counsel or any other representative of such person's choice to seek a reversal of the decision. Furthermore, the regulations prohibit the loan officer involved in the adverse credit decision from serving on the committee. Thus, FCA does not agree with the suggested changes to the regulation.

Comments were submitted suggesting that the credit review committee meeting be held in a "neutral" or "convenient" location, and not at a System institution's office. FCA believes that the lender or the committee should be responsible for selecting the location. Given all of the processes discussed in this section, which the borrower has available to him to ensure a fair review, FCA does not believe that prescribing a "neutral" or "convenient" location in the regulations is necessary. Furthermore, assuming that a "neutral" or "convenient" location can be agreed on by both parties, FCA does not believe it is an efficient use of a lender's resources to require the lender to attempt to find a location, transport the committee to a location, or pay for the use of such a location when the lender's office may adequately serve as a meeting place for the committee.

A Federal land bank association (FLBA) is not a qualified lender unless or until it becomes a direct lender and "makes loans" as "loans" is defined in the Act. Therefore, FCCA, three lenders and one individual farmer expressed concern over the fact that an FCB board member is required to serve on a committee that must review many decisions that may have been delegated to or made at a number of FLBAs. The comments suggested that the Act does not require that a qualified lender's board member be on the committee, only that the qualified lender's board of directors establish one or more credit review committees with "farmer board

representation". The commenters argued that to require an FCB director to serve on the committee at the local level will create delays and costs because the FCB director may not be as familiar with local conditions nor as appreciative of the circumstances surrounding particular adverse credit decisions as an FLBA director would be. Thus, the commenters asserted that there will be added time and expense for these directors to become knowledgeable about local conditions, and to meet on the local level at many associations.

The comments further assert that Congress intended for borrowers to have "grass roots" involvement, and for the FCB board directors to have flexibility in redelegating their duties. When an FCB committee reviews an adverse credit decision made at an FLBA on a loan which exceeds an FLBA's loan approval authority, it was further stated that it is questionable whether FCB board participation satisfies the statutory requirement of "farmer board representation" or the "grass roots" representation since FCB board members are not elected by the borrowers. FCCA noted that there will be instances where although an FCB retains its direct lending authority (and thus is the "qualified lender"), most adverse credit decisions will continue to be made by the servicing FLBAs under their delegated loan approval authority. Thus, FCCA argued that the proposed regulation is internally inconsistent, and will at least have to be revised to reflect the fact that extensive loan approval authority has been delegated to the FLBAs.

FCCA suggested that regular board members, as duly elected representatives of the local association, not advisory members should be allowed to serve on a committee, with an equal number of loan officers. Furthermore, FCB's should be allowed to prescribe guidelines for associations and the FCB, within which committees must operate and to delegate the committee function to the FLBAs with respect to those long-term loans that are serviced at the association level and for which the FLBAs have loan approval authority. FCCA asserts that its position is consistent with FCA's initial regulation issued in final form in October 1986, appropriately reflects the unique statutory and regulatory relationship between banks and associations, and provides the borrower with a review by the actual decisionmaker.

The lenders also expressed somewhat of an opposite concern that advocated the lines of authority of the committees

flow upward, as opposed to downward. The lenders are fearful that the proposed regulations prevent the review committee function from being performed at the bank level even though production credit association (PCA) loans may require bank prior approval or OFI loans may be submitted to the banks for discount. Thus, even though the ultimate credit decision would be made at the bank level, the PCA or OFI will perform the credit review functions pursuant to the language in the proposed regulations. The lenders state that if the credit review decision is not made at the bank level, or at least with bank representation, the review process is not meaningful to the borrower. Thus, one lender suggested that "qualified lenders" should be defined to include an FCB when it makes the credit decision, so that the FCB may use its committee to review the loan. In opposition to this view, one comment was received that suggested that when lending authority is transferred from an FCB to merging associations, the requirement of "farmer board representation" would be better satisfied by representation from the originating association even though the loan may require prior approval.

FCA disagrees with FCCA's and the lenders' assertions that FCB board members may delegate their responsibilities to FLBA board members. FCA has previously considered this issue and for the reasons previously articulated, FCA does not believe that a change is warranted. FCA reiterates that stockholders have a legitimate interest in having an elected board member of the institution actively participate on the credit review committee. Therefore, delegation to an alternate who may perform the credit review committee duties is permissible, as long as the alternate is also a member of the same institution's board. In response to FCCA's assertion that the regulation is inconsistent because FLBA's have been delegated certain authority, the FCB is ultimately responsible and maintains ultimate authority for those associations unless and until they become direct lenders.

FCA recognizes that PCAs require prior approval on certain loans as prescribed by regulation. The borrower should be allowed the opportunity to have an adverse decision reviewed by the actual decisionmaker. FCA does not intend that the credit review committees at the association level should review a decision ultimately made by the bank and has changed the regulation accordingly. Thus, in response to both suggestions made by the lenders and FCCA, FCA has ensured that the credit

review function is performed by the ultimate decisionmaker.

In connection with the concerns centering around FLBAs and PCAs, FCA believes it appropriate to address the issue of agricultural credit associations (ACAs). The Act authorizes the merger of a PCA and FLBA into an ACA. An ACA is a qualified lender, since it would make "loans" as that term is defined by statute and as such is subject to all of the borrower rights provisions of the Act and regulations.

Comments were also submitted requesting guidance for OFIs without boards of directors. All qualified lenders, even those without boards of directors are required to have a credit review committee pursuant to statute. The new statutory provisions on credit review committees apparently did not contemplate the situation where a lender does not have a board of directors. Thus, Congress was silent on this issue. However, Congressional intent dictates that qualified lenders without boards establish review committees similar to those as established by lenders with boards. Thus, for those lenders without boards, any corporate entity similar to a board should establish a committee(s) and any individual occupying a position similar to a board member should sit on the committee, so that lenders without boards have a credit review committee process as similar as possible to lenders with boards. All the other requirements of the regulation are applicable. FCA does not believe it should establish specific guidelines at this time because each lender without a board may offer unique problems. Thus, FCA will address these problems as they may arise on a case-by-case basis.

Section 614.4443 Review process.

A comment was submitted that suggested that the regulation should apply to both loan and restructuring applications. The regulation is intended to be applicable to both and the final regulations will clarify this by providing that § 614.4518 refers to § 614.4443. Many comments also understood paragraph (b) to be applicable only to loan applications, and not restructuring applications. Due to the many comments submitted on this issue, language will be added to paragraph (b) to clarify this point.

Section 614.4443(a) Personal appearance.

FCCA suggested that for clarity "such person" be added before the word "choice" and that "and/or" should be replaced with "or" to conform to the

statutory language. FCA agrees with these suggestions and the regulation has been changed accordingly. However, FCA does not intend its replacement of "and/or" with "or" to in anyway limit a borrower's right to have available more than one representative, wherever reasonable or appropriate.

Section 614.4443(c) Independent appraisals.

Most of the comments received were on the criteria for "independent" appraisals and "independent" appraisers. Comments suggested that an independent appraiser should be defined as: An individual not being employed by the System or FmHA during the 2 years prior to the appraisal, "accredited appraisers approved by a qualified lender but not employed by or contracting for said lender", and never employed as an appraiser or loan officer for the lender. A comment from the Society of Real Estate Appraisers suggested that more attention should be given to selecting professionally qualified appraisers. Other comments questioned what experience an appraiser would need to qualify for the lender's list. All of these issues will be addressed in a separate Federal Register document on eligibility and lending authorities.

Comments were submitted that suggested that the regulations allow for an appraisal at the first point of disagreement between the loan officer and borrower or at the first point in the restructuring process. A comment was submitted that suggested that appraisals should be allowed when a borrower applies for a new loan or for restructuring. Other comments suggested that the regulations not limit the right to an appraisal to situations where additional collateral is requested by the lender in a restructuring context. As support for this, one commenter cited to the H.R. 3980, the Technical Amendments bill. One commenter stated that this requirement for additional collateral implies that the lender has the right to demand additional collateral which this commenter interpreted as being in contravention of the Act. The commenter reasoned that additional collateral cannot be a precondition for restructuring because the standard for the lender's decision is limited *only* to determining whether the cost of restructuring is less than the cost of foreclosure, and additional collateral should not factor into this decision. Another comment stated that the regulation limits the right to an appraisal to the credit review committee process, while the statute permits appraisals

during restructuring, as well. This commenter suggested that the regulation permit an appraisal during the review process, any time additional collateral is requested, or if additional collateral is proposed as part of a restructuring plan.

The statute prior to passage of the technical amendments bill stated that an appraisal may be requested as a part of an appeal before the credit review committee by an applicant for a loan (section 4.14(d)(1)), and by an applicant for restructuring for which additional collateral was demanded by the lender (section 4.14(d)(4)). Although the technical amendments bill did not eliminate section 4.14(d)(4), it broadened the rights of a restructuring applicant to allow an appraisal in any restructuring context whether or not additional collateral was demanded by the lender. The regulations accordingly conform to the statute as revised by the changes in the technical amendments bill. In response to the commenter that stated that the lender cannot demand additional collateral, this individual failed to consider section 4.14(d)(4) of the Act which states that an appraisal shall be permitted if additional collateral is demanded by a lender when determining whether to restructure a loan.

One comment suggested that a borrower should be allowed to use any independent appraiser approved by the lender. One lender complained that providing a copy of the appraisal to the borrower limits the lender's negotiating power and ultimately decreases the price of land, thus advocating that appraisals not be disclosed to the borrower. Another commenter suggested that a request for an appraisal could be made to regional supervision prior to the review committee stage to speed up the process and to help the borrower decide whether to appeal the lender's determination. The statute specifically addresses these issues in section 4.14(d)(2), (3), and (1), respectively, and FCA is not persuaded that the regulatory requirement should be inconsistent with the statutory one. Thus, the borrower must select *one* of three appraisers, the lender must provide a copy of the appraisal to the borrower, and the appraisal may be requested as a part of the request for the review process. In response to the comment that suggested that the request for an appraisal should be made to regional supervision, FCA is of the opinion that the manner in which the request is dealt with at the institution is in the lender's discretion.

One comment suggested that the independent appraisal process should be described in § 614.4518. FCA believes

that it should be referenced, not described, in § 614.4518 and the regulation will be changed accordingly.

FCCA and one lender commented that the 30-day time period for providing the list of appraisers, providing a copy of the appraisal, and considering the results of any such appraisal is unrealistic. FCCA asserted that all of these requirements cannot be accomplished within the 30 days, especially since there is no time period specified within which the borrower must select an appraiser. FCA agrees and will revise the final regulation accordingly. FCA has also required that the borrower select an appraiser within 30 days from the borrower's request for an appraisal. This revision to the regulation is supported by the language in section 4.14(d)(2) of the legislation which indicates that Congress was concerned with the potential delay in this process. Requiring the borrower to select an appraiser within 30 days of his request for an appraisal will help ensure that this process is not unnecessarily delayed. The lender shall provide the list to the borrower as soon as possible after his request for an appraisal to allow the borrower adequate time to select the appraiser within the 30-day period.

One lender suggested that the proposed regulation should be revised to permit or encourage a borrower to contract with one of three appraisers directly to minimize any allegations of a lender's influence. FCA believes that these allegations can be better addressed by ensuring that appraisers perform their job in a professional manner.

Section 614.4443(d) Decision.

One comment stated that use of the phrase "sole discretion" implies that there are subjective standards that the committee may use in making determinations, and thus ignore the cost of foreclosure/cost of restructuring test. This commenter also stated that the language in paragraph (d) implies that there is no further review of a committee's decision and that the language should be revised to make it clear that this is not the case. One comment suggested that the reviews and decisions should not be so expeditious as to give a borrower inadequate preparation time and that the decision should not be on the same day as the deadline for a borrower's response to a lender's counterproposal. Another commenter suggested that the review process should be conducted as quickly as possible. Finally, a comment was submitted suggesting that the regulation

should establish a process for documenting the meeting.

FCA believes that some commenters misunderstood the credit review committee process. The credit review committee will be reviewing a determination previously made by the lender. If it was a decision on a restructuring application, the committee will review the lender's decision which would have compared the cost of foreclosure with cost of restructuring, as well as documents submitted by the borrower. Nothing in the regulation states or implies otherwise. The "sole discretion" language is necessary to prevent outside, undue influence on the committee's review and decision. Regarding the comment on further review, the regulations set out the procedures for the Special Asset Group and National Special Asset Council and § 614.4443 does not prevent these procedures from being established where applicable. However, FCA believes that the credit review committee's decision is the final decision of the lender. In response to the comment concerning the expeditiousness of the committee's review and decision, the borrower must be given an opportunity to prepare for the meeting. However, the decision must still be made as expeditiously as possible to prevent undue delay and costs to the lender and borrower. Thus, the words "reasonable effort" are found in the regulation to provide for an expeditious process that allows borrowers adequate opportunity to prepare for the meeting. Regarding the concern of adequate time to respond to a counterproposal, the commenter apparently misunderstood the function of the committee. Any counterproposals should have occurred at the lender's prior decision-making stage or before, and not during the committee review process which is reviewing the decision that was already made by the lender. FCA agrees with the comment that the meeting should be documented. Thus, lenders must keep complete files as established pursuant to § 614.4444 and FCA has revised § 614.4444 to require that minutes of the meetings be maintained as well.

Section 614.4444 Records.

FCA suggested that the second sentence should apply to "certified lenders" only and not to "qualified lenders", since lenders are required to have special asset groups (SAGs), only if they are certified. FCA does not agree with this comment. All qualified lenders must keep records because a qualified lender may eventually become a certified lender and the SAG may want

to review past decisions. Furthermore, FCA examiners may need to review the records of qualified lenders as part of their examination process to ensure compliance with borrower rights, as well as to examine for other regulatory concerns. To ensure that adequate records are kept for FCA examiners as well as for the SAGs, FCA has included a requirement that minutes of the credit review committees be maintained.

One individual suggested that borrower files not be destroyed. FCA does not agree that this requirement should be inserted into the regulation since the banks and associations already have their own recordkeeping requirements.

Finally, one comment suggested that procedures for disclosure of information to borrowers be incorporated into this section and that a process whereby a borrower can place items in his file for later review by a SAG or the National Special Asset Council (National Council) must also be developed. These issues are discussed under § 614.4520.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Rights of First Refusal

Subpart N sets forth restructuring policies and procedures, and requirements for reviews of restructuring decisions. In addition, requirements for System institutions' participation in mediation programs and rights of first refusal are addressed. Other subjects that are discussed are uninsured voluntary and involuntary accounts and protection for certain borrowers.

Section 614.4512 Definitions.

FCA has already addressed many issues applicable to this section in its discussion on § 614.4440, *Definitions*. Those that were not discussed or that are pertinent only to this section are addressed below. In general, comments were received criticizing a lack of clarity in the definitions. Yet most commenters failed to specify which terms they felt were unclear. To the extent that specific terms were discussed, FCA has addressed those below.

Section 614.4512(c) Cost of foreclosure.

There were a number of comments submitted on this section expressing divergent views. Some farm groups suggested that the definition should be more specific and detailed to ensure consistency. Some commenters offered specific suggestions, such as requiring a lender to compute attorney fees by using a pro rata share of a retainer, when applicable. Another suggestion stated

that the costs should not include assets that a borrower may have, other than the collateral on the distressed loan. One comment stated that when calculating the cost of restructuring, computations on the potential earning stream to be generated by the restructured loan should be used, taking into account the present cost of money to the lender. A suggestion was made that the definition should be more detailed, but on the other hand should also ensure an individual analysis using case-by-case estimates that consider all factors unique to each case. Other comments from farm groups also suggested that the cost of foreclosure be done on a case-by-case basis and that the use of generalized formulas should be discouraged. FCA agrees with the comments that expressed a preference for case-by-case analysis to ensure that each borrower will receive individualized consideration on his loan application. FCA believes that flexibility is necessary because of differences in State law and individual circumstances. Therefore, FCA declines to change the proposed regulation to include a list of factors in the definition of "cost of foreclosure."

Section 614.4512(d) Distressed loan.

One commenter questioned whether the financing of the sale of acquired property when no stock purchase is required may be considered to be a "loan" for restructuring purposes. This type of financing is not a "loan" for restructuring purposes, unless the lender treats the financing the same in all respects as if the lender were making a loan to an "eligible" System borrower, as referenced in 12 CFR 613.3000, *et seq.* As a result, purchasers of acquired property who receive financing provided solely to facilitate disposition of that property do not necessarily qualify for borrower rights. If these purchasers wish to have access to those rights, they may do so by accessing the regular lending authorities of the institution.

Section 614.4512(e) Foreclosure proceeding.

When the proposed regulations were published, FCA asked for comment on whether the regulation should specify when a foreclosure proceeding begins. FCCA indicated that there was no reason to specify when a foreclosure proceeding begins and with differences between various State laws, and judicial and non-judicial foreclosures, FCCA questioned the utility of such a definition. Although many other comments stated that FCA should define this point in time, no specific

suggestions as to how it should be defined were offered. The comment that came closest to offering a specific suggestion stated that the regulation should reference a point in time at which any action is taken to begin the foreclosure process. FCA believes that the regulation already employs this definition. The statute clearly defines a foreclosure proceeding in section 4.14A(a)(4), as does the regulation as "a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan" or as "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." Accordingly, the proceeding begins when the lender begins either of the two actions referenced above. Therefore, FCA does not believe that it is necessary to further define when the proceeding begins.

Section 614.4512(h) Restructure or restructuring.

One comment suggested that this term needs to be better defined as it is misleading to borrowers because based on the definition, borrowers may assume that they are entitled to have their distressed loans restructured. FCA does not believe that the definition creates such an expectation and thus declines to revise the regulation. FCCA states that insertion of the word "means" is more limiting than the statute which uses the word "includes" instead. FCA does not agree. The definition in the regulation includes every action that could possibly be considered to constitute a restructuring, thus the definition is not in any way restrictive. In addition, FCA believes that "means" as opposed to "includes" is appropriate to maintain consistency with all other definitions found in these regulations.

Section 614.4513 Advance payment accounts.

Some of the comments received on this section indicated a lack of understanding as to the intended purpose of the Act and this implementing regulation. One comment stated that a System institution should not be allowed to substitute or alter which debtors are paid. Some comments asked for an explanation of involuntary accounts. One comment stated that paragraph (b) should be eliminated because it violates a borrower's right to make management decisions. Another comment stated that policy and practice should not allow this paragraph to exist.

Finally, one comment stated that the definition of the terms "uninsured voluntary or involuntary accounts" should be repeated.

The wording and title of the regulation have been revised to clarify the section. The intent of this section is twofold. Both paragraphs are for the benefit and protection of the borrower and lender. Paragraph (a) allows certain borrowers to make advance payments on their accounts and authorizes institutions to accept payments prior to due dates in the loan agreement. Such payments may be applied immediately against the loan or the payments may be placed in an interest bearing account and later withdrawn by the borrower for purposes for which a lender would ordinarily increase a borrower's loan. Paragraph (b) allows institutions to enter into loan agreements that provide for disbursement of funds on a scheduled basis, such as payments made on the completion of construction of a facility which serves as collateral on the loan. This protects not only the collateral, but ensures that certain of the borrowers obligations are timely paid.

Section 4.37 of the statute provides that System institutions may maintain such accounts. Thus, the final regulation will be changed to apply to System institutions, as opposed to qualified lenders.

One comment questioned how these accounts are to be applied in the event that a System institution is liquidated. This issue will be addressed by necessary revisions to the regulations in 12 CFR Part 611 concerning the disposition of these accounts by a receiver in a separate Federal Register document.

Section 614.4514 Protection of borrowers who meet all loan obligations.

A farmers group suggested that the regulations should require lenders to notify borrowers of their rights under this section. FCA disagrees with this comment as the statute does not require such notification. A lender stated that neither the Act nor the regulation addresses the issue of default under contractual terms other than failure to meet scheduled payments, referred to as "nonmonetary defaults" by the lender. The lender further asserted that while the proposed regulation could be interpreted to permit appropriate legal action for these "nonmonetary defaults", it would reduce interpretive problems if the regulation addressed the issue specifically. The regulation only speaks to specific actions from which the lender is prohibited, when a borrower has complied with certain obligations. The

regulation does not, nor is it intended to prevent any other recourse that a lender may legally have available to it. Thus, FCA disagrees with the lender that the issue of nonmonetary defaults needs to be addressed.

Section 614.4514(b) Limits on the reduction of principal.

One borrowers group commented that the regulation should prohibit a lender from requiring that a borrower reduce the outstanding principal balance of a loan by more than the scheduled amount if a borrower sells or disposes of collateral in the ordinary course of his business or at an otherwise authorized sale. FCA agrees and will revise the regulation accordingly.

One comment suggested that if a lender legally accelerates the principal reduction, the lender should be required to negotiate a new loan agreement independent of the loan contract. FCA believes that the form of the agreement is a matter that should be decided by the parties. Thus, FCA is not persuaded that the language of the regulation should be revised.

Section 614.4514(d) Placing a loan in nonaccrual status.

One legal aid organization suggested that the regulation should prohibit a lender from placing a loan of a borrower who meets all of his obligations in nonaccrual status. However, the Act contemplated this possibility. Accordingly, section 4.14D of the Act does not prohibit such action, but affords borrowers certain safeguards if a lender takes such action. Thus, FCA will not change the regulation to contradict the statute by prohibiting such action.

One comment suggested that a time frame should be specified in which the borrower must appeal to the credit review committee. FCA agrees and has provided the borrower with 30 days after receipt of the notification in which to request a review, consistent with § 614.4441.

FCCA suggested that the regulation should be revised by adding "only if" to make it clear that the borrower is entitled to a review only if the placing of a loan in nonaccrual status results in an adverse action. In response to FCA's request for comments in the preamble to the proposed regulations, FCCA also stated that the one example of "adverse action" in the regulation helps to clarify what an "adverse action" is and that there is no significant benefit from including additional examples or further defining "adverse action." Although other commenters suggested that

"adverse action" be further defined, no other examples of "adverse action" were submitted, and FCA does not believe that any further examples are necessary. Regarding FCCA's comment suggesting insertion of "only if", FCA believes that the wording of the regulation is clear. However, FCA has underlined the word "and" for purposes of emphasis.

Section 614.4515 Restructuring policy and reporting.

Section 614.4515(a) Restructuring policy.

Comments were submitted requesting that the regulations impose conformity among the lenders by setting forth in detail the form and content of the policies and that FCA review the policies. At a minimum, FCA was urged to offer guidance on the content of the policies. One individual commented that FCA needs to ensure that the policies establish guidelines which will keep costs down and prevent unnecessary paperwork and other burdens that may hinder institutions' competition with other financial lenders. Finally, one comment suggested that the policy and all related information should be submitted to the borrower before the submission of his restructuring plan.

As stated above in the discussion under the general comments, FCA will not micromanage institutions by prescribing every detail that must be included in the policies. FCA has required in § 614.4515(a)(1) that the policy be adopted under § 4.14A(g), and pursuant to this section, the policies have been submitted to FCA. However, the statute does not give FCA approval authority, as requested by one commenter. In fact, Congress initially gave FCA approval authority over the policies, and later deleted this provision from the language of the Act. Thus, FCA does not believe that Congress intended for the agency to prescribe the specific content of the policies. In response to the comment that requested the policy and all related materials be sent to the borrower before submission of a restructuring plan, § 614.4516 requires that this be done.

A Congressman alleged that borrowers who are not delinquent, but nevertheless are "distressed" are being sent restructuring applications and even though these borrowers are current, institutions are using the distressed status as a means of foreclosing on current borrowers. The commenter suggested that this is contrary to the intent of the Act. There is a section of the Act specifically addressing those borrowers who meet all loan

obligations. If there have been violations of the law or regulation, FCA will address these problems through its examination, supervisory and other authorities, as appropriate.

One individual commented that lenders should be willing to provide credit to effectuate restructurings. However, in some instances this may not constitute safe and sound lending practices. In any event, FCA does not believe that it should dictate to lenders or borrowers how loans should be restructured. This decision will be made by each lender on a case-by-case basis after considering material submitted by the borrower. As long as the lender follows the guidelines and requirements set out by safe and sound practices, statute and regulation, the method which accomplishes the restructuring is within discretion of the lender.

A farm group suggested that FCA should require institutions to update their policies, particularly if a lender's semiannual reports indicate that there have been fewer restructurings as compared to other institutions. As stated in the preamble to the proposed regulations, FCA anticipates that institutions will update their policies as the restructuring process becomes more familiar to them. However, FCA does not see a need to require revisions to the policies at this early stage.

Section 614.4515(b) Semiannual reports.

One comment suggested that no foreclosures or denials of any applications be permitted until the institutions comply with § 614.4515(b). Another comment suggested that the initial report to FCA on loans eligible for restructuring should serve as a benchmark before any restructurings are completed. However, if adopted, these suggestions would be contrary to law. The new provisions of the Act were effective as of January 6, 1988, unless stated otherwise.

A farmers group commented that the reports should contain the disposition of the restructuring applications, and of appeals to the credit review committees. System institutions requested guidance on whether the reports should be based on month-end figures, as opposed to daily average balance figures and also questioned when a loan is no longer considered "distressed" for the purposes of the reports. The initial reports were to have been filed before these final regulations could be published. After FCA has had the opportunity to review and analyze at least the first set of reports, it will be better able to specify the required content in more detail. In accordance with an FCA booklet, the

first report was to be filed no later than August 31, 1988. After analyzing those reports, FCA will advise institutions of the future scheduling for filing the reports.

Section 614.4516 Restructuring procedures.

A number of comments from borrower and farm groups suggested that more information be sent to the borrower along with the notice. Comments submitted suggested that detailed information (such as a standard formula used for calculating holding costs, the minimal interest rate that the lender will consider) and all calculations should be provided to the borrower at or prior to the meeting so that the borrower is better able to submit a restructuring application. Commenters asserted that borrowers are uninformed as to what constitutes an adequate application, unless the lenders are able to offer some guidance. As discussed in § 614.4440(c), FCA agrees that there must be communications between borrower and lender during the restructuring process. However, FCA also believes that it is impossible to provide a specific list of information in the regulation that must be considered by the lender in making its determination. This will vary by loan, restructuring plan, location and other factors.

It was suggested that lenders send an application for restructuring along with the notice. Comments suggested that the lender should offer help to the borrower in filling out forms and that the notice should contain more direction on how to present a restructuring plan and what information needs to be provided by the borrower. This paragraph requires that the lender send all materials necessary to enable the borrower to submit an application, and these forms may include an application. However, to require the lenders to assist the borrower in submitting restructuring plans would place unreasonable costs on the System and may create potential liability for the lender by possibly compromising the loan contract. A borrower must take responsibility for submitting his own initial plan and application. The lender is required by § 614.4516(a)(2) to provide borrowers with all materials necessary to enable the borrower to submit an application. Furthermore, when a lender does not have enough information to make a sound credit decision, the lender must contact the borrower to obtain such information. However, a lender cannot provide a specific list of "required information" because this may be different in each case.

Many comments were received concerning the "preliminary plan." Comments suggested that the notice should state that the plan is preliminary and explain what constitutes a preliminary plan, and state that the plan may be further refined in discussions with the loan officer. Comments also suggested that the notice should define restructuring and what happens if a borrower does not respond. The purpose of a notice is to briefly and succinctly notify a borrower of important rights that are available to him. A notice is not intended to inform a borrower as to entire processes. While lenders may opt to include more information in the notice, FCA believes that the notice is adequate. The notice must be provided along with a copy of the restructuring policy which must include an explanation of the procedure for submitting an application, pursuant to § 614.4516(a)(1) and section 4.14A(g) of the statute. Thus, the policy that is sent with the notice will serve the purpose of informing a borrower of his right to submit a preliminary plan. In response to these comments requesting that the notice inform borrowers that the alternative to restructuring is foreclosure, FCA agrees and has revised the regulation accordingly.

Commenters questioned whether the borrower must submit a preliminary plan prior to or after the meeting with the lender. Comments were submitted expressing both views on this issue. Since lenders and borrowers seem to prefer both options, and FCA believes that both approaches may be beneficial, the proposed regulation has not been changed to specify when the plan must be submitted in relation to the meeting.

One comment suggested that the borrower have the opportunity to meet with an individual other than the loan officer in the event of a personality conflict with the officer. FCA does not believe that the regulations should be rewritten to accommodate personality problems that may exist between borrower and loan officer. This would place an unrealistic burden on the lender, since some institution offices only have one loan officer available. Furthermore, borrowers who feel they have been denied a fair review of their restructuring application have recourse to the credit review committee.

One comment stated that the loan officer should be required to inform the borrower orally that the restructuring request must be in writing. FCA agrees that the borrower must be informed that the application must be in writing. However, FCA does not believe that the regulation must state that a borrower be

informed orally, since the regulation requires that the lender's notification include with it "all materials necessary to enable the borrower to submit an application for restructuring." Thus, the borrower will be informed of this fact.

Comments suggested that the notice be sent certified mail and that the notice, policy, and materials, should be sent to all primary obligors and their attorneys. The borrower is protected by the requirement that the notice be sent no later than 45 days before foreclosure proceedings begin. Thus, it does not matter how the notice is sent and FCA will not require the lenders to use certified mailings. However, FCA expects that the lender may choose to use certified mail as a practical means of ensuring that the notice has been timely provided to the borrower. For the reasons discussed in § 614.4367(e), FCA will not require the lenders to send the notice to all primary obligors. If a borrower wants the notice to be sent to his attorney, all the borrower has to do is notify the lender of this. A lender should comply with this request since notification to a primary obligor's attorney complies with the regulatory requirement of notification to the primary obligor.

Comments were submitted that suggested that the regulation require the lender to submit a counterproposal when the borrower's initial plan was not acceptable and state the reasons for rejection of the initial plan. FCA does not agree that counterproposals should always be required. As explained in § 614.4440(c), the lender and borrower must work together until the lender has sufficient information to support a sound credit decision. Thus to the extent that a counterproposal would offer reasons for rejection of the initial plan and explains to the borrower the flaws in his initial plan, the regulation effectively serves this purpose, as required by §§ 614.4440(c) and 614.4512(a).

FCCA suggested that "under this section" be inserted in paragraph (b) following "has been sent" for purposes of clarity and that paragraph (c) be revised to track the statutory language in section 4.14A(d)(2) of the legislation. FCA disagrees with these suggestions. FCA believes that paragraph (b) is clear as drafted. Although paragraph (c) is not inconsistent with the statute, it cannot track the section in the statute word for word because to do so would not make sense in the context of § 614.4516. A few comments questioned what "nonaccrual" means. FCA refers these commenters to 12 CFR 621.2(a)(15).

Section 614.4517 Restructuring decisions.

Comments were submitted that expressed concern over the inequities created by requiring "good" borrowers to repay their loans on the same terms while other borrowers are entitled to repay under restructuring plans. On the other hand, some comments stated that lenders should give borrowers more opportunities to restructure loans. While some comments requested that FCA specify more restructuring procedures and guidelines for the lenders, the opposite view that FCA should not micromanage lenders as they need flexibility to reach sound business decisions was also expressed. Again, FCA has attempted to strike a balance between these concerns.

Comments were submitted requesting that the regulation be rewritten to better define the costs of restructuring and foreclosure, to provide better guidance to the lenders on how to calculate these costs and what formulas should be used by the lenders, and to provide all of this information including worksheets, calculations, assumptions and formulas, to the borrower in the early stages of the process (i.e., before a borrower applies for restructuring, or before a lender renders its determination). First, the cost of foreclosure is defined in § 614.4512(c), and § 614.4517 (a) and (c) addresses the cost of restructuring. FCA believes that these sections adequately define these terms and address the factors that are a part of these definitions. The terms and definitions are those commonly used in the agricultural credit sector. Second, as stated earlier, in §§ 614.4440(c), 614.4441(a), and 614.4512(c), no definitive cataloguing of assumptions, calculations, or formulas is possible, since the factors may very well differ in each situation. Thus, this information cannot be provided to the borrower at one of these earlier stages, because the specific information upon which the lender will base its decision will not be known until after each application is submitted.

Section 614.4517(a) Consideration of application.

Comments requested that terms such as "necessary and reasonable living and operating expenses" and "sound lending practices" be defined. One commenter questioned whether sound lending practices are intended to keep the farmer on the land and another commenter questioned whether they include actions based on the determination of whether the cost of restructuring is less than the cost of

foreclosure. FCA does not believe the regulation can define and provide a nationwide standard for terms such as "necessary and reasonable living and operating expenses" as they will differ depending on the location, borrower, circumstances, and other factors. Similarly, "sound lending practices" must be determined by examining each situation and the circumstances and factors surrounding each situation using general credit standards and safe and sound business practices.

Comments suggested that any subjective information concerning a borrower's skills, as discussed in § 614.4517(a) (3) and (4), that is used by the lender in its decision-making process should be made available to the borrower so that the borrower is able to rebut this information before the credit review committee. This information may include information obtained from members of the borrower's community. This issue is discussed in § 614.4518.

FCA believes that lenders must take into account a borrower's prior restructurings, if any, on the loan that is presently the subject of the restructuring application and the regulation has been revised accordingly. The borrower's payments on prior restructurings of the loan is an important factor that will help the lender assess whether the borrower is capable of working out existing financial difficulties. If lenders allow multiple restructurings regardless of past history on the same loan, then a borrower has the incentive to seek successive restructurings to eventually eliminate his obligations and borrowers who are meeting their loan obligations, including those involved in restructurings, will be unjustly required to pay for these additional costs to the System lenders.

Section 614.4517(a)(1) Evaluation of cost of restructuring.

Comments requested that FCA define "present value of interest and principal foregone", "preliminary restructuring plan", "reasonable and necessary administrative expenses", and "in a form acceptable to the institution." Another comment stated that the "administrative expenses" must be reasonable so that a lender cannot unjustifiably increase these costs, so that the cost of restructuring will most likely be greater than the cost of foreclosure. One comment suggested that in evaluating the cost of restructuring, an appraisal must contain correct information and apply to the specific property under consideration. Another commenter indicated that the

appraisal should be the lowest of any for which the borrower has paid.

One comment suggested that in evaluating its cost of restructuring, the lender should also consider the following: The cost of insurance for absentee ownership, ad valorem taxes, the loss of income from property, damage sustained by leaving property unoccupied, the decline in land prices caused by large institutional inventories, cost of marketing and advertising property for sale and the lender's overhead. One comment suggested that in evaluating the restructuring cost the lender should be required to offer the lowest interest rate to the borrower that it offers to its best customers and that 30-year loans should be available. FCCA suggested that in the first sentence of this paragraph, "a restructuring plan" be deleted and replaced with "restructuring a distressed loan" to conform to the language found in section 4.14 A(e)(2) of the statute. Finally, one commenter suggested that either the definition of cost of foreclosure found in § 614.4512(c) be placed in this section, or the evaluation of cost of restructuring found in paragraph (a)(1) of § 614.4517 be moved to § 614.4512.

FCA believes that the present value of interest income and principal foregone will vary based on the lender's interest rate, debt adjustment, and other factors. A "preliminary restructuring plan" is defined in §§ 614.4440(c) and 614.4512(a) as being part of an application for restructuring and FCA believes that no further definition is required. As stated earlier, "reasonable and necessary administrative expenses" will vary depending on the situation as will information that is "in a form acceptable to the institution." FCA agrees that a lender cannot unjustifiably increase the administrative costs to ensure that foreclosure will be less costly than restructuring. Thus, the regulation speaks of reasonable, as well as necessary costs. FCA agrees that the appraisal must contain correct information and be performed on the appropriate piece of property. No suggested changes to the proposed regulation were offered on this point, and FCA believes none are needed since the regulations adequately provide for this. FCA disagrees with the comment that the appraisal should be the lowest one. Where an appraisal is appropriate, section 4.14(d)(2) of the statute gives the borrower the opportunity to "select an appraiser." Thus, the borrower cannot continue to employ appraisers until he gets an appraisal that he likes.

Regarding the costs of restructuring, section 4.14A(e)(2) states that a lender

shall consider "all relevant factors" including a list of items that the statute provides. The items that the commenter named may or may not be relevant in every case. Thus, FCA is not willing to prescribe them in the regulation. However, to the extent that they are "relevant factors", they must be considered by the lender. In response to the comment that asserted that the lender should be required to offer the lowest interest rate to the borrower for a 30-year loan, FCA disagrees that it should dictate specific loan terms to a lender. These are business decisions that must be made by the lender, not FCA. FCA has changed the statutory language in the first sentence of the paragraph based on the suggestion by FCCA. This revision is important in order to differentiate between a preliminary restructuring plan and a restructuring application. FCA does not believe it is necessary to move the definition of "cost of foreclosure" or the cost factors of restructuring, since the definitions found in § 614.4512 are applicable to the entire subpart. However, FCA has transferred the factors to be considered when determining whether to restructure from paragraph (c) to paragraph (a)(1).

Section 614.4517(b) Required restructuring.

Comments stated that there is no incentive for lenders to restructure if the decision is based solely on cost. Another comment stated that if the cost of restructuring, must be less than the cost of foreclosure before a lender is required to restructure, the "middle" borrower will not have much of an opportunity to have his loan restructured. Section 4.14A(e)(1) of the statute specifically states when a lender is required to restructure and FCA cannot alter the statutory language.

One comment stated that "the least cost to the lender" should be defined and another comment suggested that it be defined using criteria prescribed by section 4.14A of the 1987 Act. FCA believes that the regulation already defines this term in accordance with the statute. Even though two or more alternatives are available to lenders, they will still have to consider the costs of those plans as prescribed by the regulation in paragraph (a) of 614.4517, which tracks the language of section 4.14A (d) and (e)(2) of the statute.

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

There were a number of comments addressing a borrower's access to information upon which a lender's

denial of the restructuring application was based. All comments indicated that the borrower is entitled to information that factored into the lender's decision. However, there were differences of opinion as to how much information and the mechanism under which it should be provided.

Comments from individuals and farm groups requested that more information be provided to support and explain the reasons for the denial of the restructuring application. Comments from other groups and individuals also expressed concern that the regulations ensure that full documentation of the reasons for denial is made available to borrowers under a uniform procedure. One commenter suggested that the following language be added to paragraph (c): "including full documentation of the lender's calculations of the cost of restructuring and the cost of foreclosure." The comments advocated that the regulation should require that the lender provide specific reasons for the denial, including any actual calculations; assumptions used; documentation to explain why the cost of restructuring would be greater than the cost of foreclosure using formulas that considered specific suggested factors; all figures and formulas used, such as interest rates, administrative costs, and family living costs as assumed by the lender; in short all information relied on or used by the lender in reaching its decision. Comments stated that this information need only be provided when the application is denied.

It was asserted that without all of this information, a borrower cannot easily decide whether he would want to request a review before the credit review committee. Furthermore, comments stated that if a borrower decides to request a review, he cannot challenge the assumptions upon which the decision was made without such information. Farmer and borrower groups asserted that merely providing a contact person to provide such information, as the proposed regulation requires, is not sufficient. Since a borrower only has 7 days in which to request an appeal, this information should be provided in the notice to enable the borrower to review the information and decide within that 7-day period whether he wants to request a review. If a borrower has to contact an individual to obtain the information, it will leave little time of the 7 days that is left to examine the information and decide whether to request a review.

FCCA agrees with the position that FCA took in its preamble to the

proposed regulations. Namely, FCCA asserts that some of the critical assumptions and other relevant information used by the lender in making its decision could be helpful to a borrower in deciding whether to request a review. However, such information should not be routinely provided as part of the notice of denial. Rather, the notice should specify whom the borrower should contact to obtain such information and indicate that such information will be furnished upon written request. FCCA further comments that the regulations should also provide that upon the written request of a borrower whose restructuring application has been denied, the lender shall furnish, in writing, the critical assumptions and other relevant calculations or information, whether monetary or non-monetary, upon which the lender based its decision to deny restructuring. The regulations should also make clear that where the lender has based its denial on non-monetary consideration, the lender is only required to specify those considerations and furnish that information which played a material role in its decision. In further explaining this viewpoint, one lender asserted that an institution's decision not to restructure is not strictly quantifiable. Oftentimes it is based on "intangibles," such as the borrower's efforts to cooperate, his ability to produce, and the like. The lender also indicated that disclosure of information even as required by the proposed regulation would change the negotiation process between lender and borrower into "one of arbitrating outcomes—on one side hypothetical costs based on past and anticipated future experience, opinions, and strategies; on the other, opposing opinion motivated by the desire to achieve a more favorable financial outcome."

FCA has considered all viewpoints and balanced the borrower's right to a meaningful review before the credit review committee against a lender's right to negotiate with current and prospective borrowers. FCA notes that certain relevant information, in addition to the reasons for the lender's decision, should be provided to ensure that a borrower has the right to a meaningful credit review. Regarding what information should be provided, FCA does not believe that *all* information must be provided to the borrower. First, FCA realizes that some denials will be based on subjective judgment as opposed to quantifiable factors. Thus, some borrowers will be provided with figures and calculations, while others will be informed that they are not

capable of repaying the loan and provided quantifiable, as well as the nonquantifiable reasons for reaching such a conclusion. While FCA believes that a borrower is entitled to the reasons for the decision and the bases for those reasons to enable him to decide whether to appeal and so that the borrower is entitled to a meaningful review, FCA does not believe that a lender must disclose every piece of information and all of its calculations so that a lender will be unable to effectively negotiate with borrowers or compete with other financial institutions. Thus, FCA has required that critical assumptions and relevant information be provided. Enough information must be provided to ensure that a borrower understands the reasons for a lender's decision, to provide him a basis to decide whether to appeal and to provide him with a meaningful review process. Where a lender is bound by confidentiality restraints, it obviously cannot disclose this information. Thus, the regulation is revised to incorporate the above considerations.

Regarding the process for supplying information, this section will differ from § 614.4441 regarding adverse credit decisions. Unlike § 614.4441 which provides a borrower with 30 days in which to request a review, an applicant for restructuring only has 7 days. Thus, FCA believes that unlike § 614.4441, the lender must automatically provide the relevant information under this section, when denying a restructuring application to the applicant without first requiring that an applicant request such information. This will ensure that an applicant is able to decide within that 7-day period whether he wishes to request a review and will also give a borrower an opportunity to begin preparation for the credit review.

Additional comments were received concerning the contents of the notice. One commenter stated that the notice should be "clear" without specifying how the notice was vague. One commenter stated that the notice should include information on the documentation that a borrower can provide to the credit review committee. Other comments requested that the notice should include information on the appraisal, that the notice should include information on the appraisal only where additional collateral is required, that the notice should inform the borrower of any State mediation programs prior to the denial, that a separate form to request a credit review should be sent to the borrower, and that "7 days" should be in bold print and conspicuously placed in the notice.

FCA agrees with some of these suggestions. Notification is not intended to prescribe every right or every procedure available to the borrower. However, the notice requirements are intended to inform a borrower that certain rights to appeal the denial of a restructuring application are available to him as provided by the 1987 Act. For these reasons, FCA agrees that a borrower should be notified of his right to an appraisal when additional collateral is demanded by the lender in a restructuring context, but disagrees with the other proposed notifications. With the changes to the proposed regulation, FCA believes that the notification to borrowers is clear and that the notice requirements set forth in the regulation are adequate. In response to the comment that 7 days should be in bold print, FCA believes that the form of the notice is within the lender's discretion, but FCA suggests that the lender should give that prominence.

Comments were submitted concerning the manner in which the notice should be sent. Some commenters expressed the opinion that the notice should be sent by certified mail to all primary obligors and their attorneys and that the 7-day time limit in which a borrower must request an appeal be extended when the notice is sent to a "third party", such as an attorney. Also, other comments suggested that the 7-day period was too short, regardless of the recipient, and in any event the 7 days should start to run from the date that the notice is received. One comment said that the notice should be sent to the "proponent" of the restructuring plan.

FCA agrees that the notice sent pursuant to this section must be sent by certified mail or in any other manner that will allow for acknowledgment of receipt. Although FCA has not required this of the notices discussed above, since a borrower only has 7 days from receipt in which to request a review of a denial of a restructuring application, FCA believes that it is appropriate to require a lender to use certified mail or other appropriate means to ensure that a borrower is timely notified in order to exercise his rights if he chooses. FCA believes that timely notification is particularly important in this instance, since the 7-day period is much shorter than the 30-day period. In response to those comments that stated that the 7-day period in which to request a review was too short, the statute prescribes this time limit, and the regulation conforms with the statutory requirement. FCA does not believe that the regulation needs to be revised to state that the 7-day period begins from receipt since

paragraph (c) of § 614.4518 makes this clear. In response to the comment that the notice should be sent to the "proponent" of the plan, FCA believes that the notice requirement may be fulfilled by sending the notice to a primary obligor. However, lenders should attempt to send the notice to the primary obligor with whom the lender has been dealing in regard to the restructuring application.

One comment stated that the lender should be given a deadline in which to reach its decision since the borrower for all intents and purposes, has 45 days in which to apply for restructuring and one comment suggested that the following language be added to the end of paragraph (c) to give a borrower adequate time in which to prepare for a credit review before the committee: "and the borrower, upon request, shall be allowed up to 30 days in which to prepare for such review."

The time in which it takes to make a determination will vary depending on such factors as the complexity of the particular restructuring plan and the number of restructuring applications at the institution. Therefore, FCA does not believe that the lender should be instructed to reach a decision within a prescribed period of time. Furthermore, there is no incentive for a lender to delay making its decision, since it is not in a lender's best interest to allow a distressed loan to remain on its books for a long period of time without some form of corrective action. Similarly, FCA does not believe that it should prescribe a time limit in which the borrower has to prepare for the review. As discussed in § 614.4442(d), a reasonable time period must be allowed. However, FCA does not believe it is appropriate to prescribe a fixed time period in which to prepare for the review since the preparation time that is needed will depend on the complexity of the reasons for denial, supporting information, and other factors.

Section 614.4519 Notice before foreclosure; limitation on foreclosure and Section 614.4519(a) Notice requirements.

Comments were submitted requesting that more information be included in the notice. One comment stated that the lender should be required to explain the procedural steps taken before and after restructuring applications are considered. One comment suggested that the borrower be notified of his right to an appraisal. Another comment requested that the notice should clearly state that foreclosure is being contemplated and that the lender should be required to notify the borrower of the

timeframes involved. The notice is intended to be a notification that foreclosure may be imminent, and that the borrower has the right to submit a restructuring application. It is not intended to be an extensive explanation of the process. For these reasons, FCA disagrees with the suggestions that the notice include the procedural steps, timeliness, and the right to an appraisal. However, FCA agrees that the notice should inform borrowers that foreclosure may be imminent and this section as well as § 614.4516(a) have been revised accordingly.

Section 614.4519(b) Limitation of foreclosure.

There were a number of comments requesting that FCA place more limits on a lender's ability to foreclose. One comment stated that the regulation should clarify that foreclosure may not be initiated until a lender has completed any consideration of a restructuring application, including a review by the credit review committee. Comments suggested that foreclosure not be permitted until all restructuring attempts and processes are exhausted, including a decision by the SAC, a review by the National Council, and an appeal to the FCA for a directive. One comment suggested that a lender not be allowed to begin foreclosure proceedings until 45 days after its decision on a restructuring application. Other comments suggested that no foreclosure be initiated until after 45 days has passed during which a borrower has not responded, and notice of loan acceleration has been sent to a borrower providing an additional 30 days in which to pay. One comment asserted that the regulation is broader than the statute in that it allowed more foreclosures than the statute did. Unfortunately, this commenter did not specify how he interpreted the regulation to be broader. FCCA found it to be narrower in that FCCA alleged that the regulation limits the lender's ability to foreclose in certain situations (i.e., during consideration by a credit review committee).

FCA agrees that foreclosure may not be initiated during the credit review process. In response to FCCA's comment, the regulation does prohibit the lender from initiating, continuing or completing a foreclosure proceeding pending the completion of the credit review committee process. FCA believes that without this provision, the credit review committee process would be meaningless and borrowers would be deprived of their right to a fair review. On the other hand, even though a lender must wait until the committee process is

complete, since the committee must render its decision in as expeditious a manner as possible, FCA does not believe that lenders are deprived of their right to a timely foreclosure where appropriate. Foreclosure may be initiated after the credit review process, but must be halted if a SAG requires restructuring. Thus, a lender will have the incentive to begin foreclosure only when it believes it is on very firm ground regarding its decision to foreclose. The borrower is not prejudiced in any way as long as foreclosure does not occur until after the credit review committee has completed its consideration. Thus FCA has balanced both the interests of a borrower to a meaningful credit review and the interests of a lender to timely foreclosure in determining this approach.

The last sentence in this paragraph has been revised to conform to the statutory language found in § 4.14A(j) to provide the lender with the opportunity to take action where it has reasonable grounds to believe that loan collateral may be destroyed.

Section 614.4519(c) Limitation on foreclosure—special asset group determination.

One comment suggested that the following language be inserted into § 614.4519(c): "No foreclosure proceedings may begin until all possible appeals and restructuring actions have been completed." As discussed in the immediately preceding paragraph, the regulation balances both the borrower's rights and those of the lender. Therefore, FCA does not agree that this section should be revised as suggested.

Another comment questioned what would happen if a SAG decided that a loan should be restructured, but the decision had previously been made by a lender not to restructure and foreclosure was already complete. FCA does not expect this situation will exist. A certified lender's SAG is to review only those determinations where a restructuring plan has been denied. Thus, unlike the credit review committee, the SAGs are established for a more limited purpose and they should be able to better perform timely reviews. Furthermore, the usual foreclosure process is a lengthy one. Thus, in the time that it takes a lender to complete this process, SAGs should be able to perform their reviews in a timely fashion.

Section 614.4520 Review of restructurings for certified institutions: reporting.

Comments suggested a borrower should be able to submit information to the SAG and the National Special Asset Council (National Council) and that their determinations should be disclosed and made available to borrowers and other interested parties. Comments also suggested that procedures for the SAG and National Council should be set forth in the regulations. FCA does not believe that the regulations should require that borrowers or third parties have direct access to the SAGs or the National Council since the statute does not provide for this. Furthermore, FCA does not agree that it should prescribe procedures for the Council and the SAGs. The procedures are more appropriately established by the SAGs and the National Council. Also, the Farm Credit System Assistance Board, and not FCA regulates the National Council.

One comment stated that the SAGs should review all denials of restructuring applications. Another comment questioned whether an institution in receivership would be able to work with the former institution's board of directors to establish a SAG. Finally, FCCA commented that § 614.4520(g) should refer to § 614.4517(a) to conform to the statutory language and to clarify the factors that these entities are to consider when reviewing decisions.

Paragraph (b) of § 614.4520 already requires the SAGs to review all restructuring denials. In response to the comment on receiverships, as has been previously stated in this preamble, FCA will make these determinations applicable to each individual receivership when or after a receivership is established. As FCCA indicated, the regulation will refer to paragraph (a) of § 614.4517.

Section 614.4521 Participation in state agricultural loan mediation programs.

Comments were submitted on the effect, if any, that mediation should have on the foreclosure process. Comments suggested that borrowers who request mediation should be allowed to participate before they participate in the restructuring process. Other comments stated that mediation should occur during the preliminary restructuring phase, before the 45-day period referenced in § 614.4519 begins, and during the 45-day period. Additional comments expressed the view that foreclosure proceedings should be stayed any time mediation is initiated.

On the other hand, one comment stated that mediation is no longer appropriate after a lender has rendered a final decision on foreclosure.

FCA has specified that mediation may occur either concurrently with loan restructuring or at any other appropriate time. As long as lenders participate in those mediation programs certified under section 501 of the 1987 Act so that borrowers are able to take full advantage of their mediation rights, FCA does not believe it is appropriate for the regulations to further restrict a lender's foreclosure rights by requiring that the foreclosure process be stayed or not initiated during mediation, as long as State law does not dictate otherwise.

Other comments focused on the lender's participation in mediation. One comment suggested that in mandatory mediation States, institutions should initiate the mediation process. Another comment suggested that institutions be required to participate in good faith regardless of who initiates the mediation. One comment suggested that in voluntary mediation States, an institution should be required to participate even if another lender, not the borrower, requests mediation. Finally, one citizens' group advocated that the FCA establish a policy that would require all System institutions to participate in State mediation programs. If a mediation program permits a lender to initiate mediation, it may do so as determined by the lender's own discretion. However, 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. Even those certified programs will vary by State. Thus, FCA has declined to set further requirements for institutions' participation. Regarding the comment suggesting that the lender participate in mediation when initiated by a third party, although FCA has not prescribed this participation in the regulations, lenders may want to consider such participation to protect their interests especially when the lender is not a first lien holder.

Comments suggested that the institutions notify borrowers of their rights under mediation and in this notification provide timeframes so that a borrower will be able to take advantage of mediation before any determination on a restructuring application is final. One comment suggested that all notices sent out under the borrower rights regulations should inform borrowers of the applicable mediation rights and that the regulations should outline the necessary requirements or credentials

for a mediator. Another comment stated that FCA should specify processes for mediation. FCA does not believe that the notices of disclosure, loan or restructuring application, or first refusal rights prescribed by these borrower rights provisions are the appropriate vehicle to notify borrowers of their mediation rights. Nor does FCA believe that its regulations should require institutions to notify borrowers of their mediation rights since some locations may not have mediation available to borrowers, and those that do will vary greatly. The appropriate vehicle for the suggested notification may very well exist in the mediation programs themselves. Furthermore, FCA believes that any integration between the mediation process and the borrower rights processes is better left to the institutions themselves, as may be prescribed by any State mediation program or State law.

Comments suggested that the FCA explain the requirements for certification under section 503(b) of the 1987 Act. FCCA indicated that the final regulation should refer to section 501 of the 1987 Act, instead of section 503(b) as the proposed regulation does. FCCA suggested that "consideration" be inserted before "loan restructuring" for clarity and that "under the same terms and conditions applicable to agricultural creditors generally" be inserted immediately following the reference to the 1987 Act to conform to FmHA's proposed regulations. FCCA also recommended that "To the extent permitted by Part 618, Subpart G, of these regulations" be inserted at the beginning of the paragraph (b) to remove any potential conflict.

In response to the comment requesting that the requirements of certification be contained in the notice, FCA believes that the borrowers rights regulations are not the appropriate place to expound on the requirements for certification. FCA refers this commenter to section 501 of the 1987 Act, codified at 7 U.S.C. 5101 which addresses this issue. FCA concurs with FCCA's suggestion that section 501, as opposed to section 503(b) is the appropriate citation, and the regulation will be revised accordingly. FCA agrees that inserting "consideration of" would clarify the regulation and the final regulation will be revised accordingly. However, FCA declines to make the other two changes suggested by the FCCA. FCA is not convinced that terms and conditions applicable to other agricultural creditors should also be applicable to the System institutions. Regarding a potential conflict with Subpart G of Part 618, FCA has

addressed this issue in Subpart G by requiring that institutions provide such information, with the borrower's permission, to comply with paragraph (b) and the requirements of section 503 of the 1987 Act.

Section 614.4522 Right of first refusal.

In general, comments were submitted by borrowers groups and individuals indicating that FCA should grant more rights to previous owners to help ensure that an individual can remain on his land. On the other hand, comments were received from lenders, as well as borrowers expressing concern over the costs and harm to the System created by the rights of first refusal. FCA has balanced these interests in drafting the regulation.

There were a number of comments focusing on the public auction paragraph of the regulation and its interaction with the remainder of the paragraphs in the regulation. Specifically, many commenters expressed divergent views on whether the Act prohibits a System institution from selling or leasing acquired property through a public auction pursuant to paragraph (e), without first providing first refusal rights under paragraph (c) or (d). Many individuals and farmer groups expressed the view that the regulation should not allow for a public auction as set forth in paragraph (e), unless the institution has first gone through the first refusal process in a private sale or lease as prescribed by paragraph (c) or (d). The reasons for this view were many. One commenter stated that since there is no "notice period" provided in paragraph (e) which would allow a previous owner to arrange for financing, Congress must have intended an institution to first follow the steps in paragraphs (c) and (d) which do have such a "notice period." Other commenters stated that Congressional intent dictates this position. It was further asserted that Congress intended to provide first refusal rights to previous owners and that providing the previous owner with notice and opportunity to bid at public auction and requiring an institution to accept the bid of the previous owner if it is a qualified bid that matches the highest offer should not be considered to be a "right of first refusal." Finally, some commenters proposed that FCA should follow the recent district court decisions, both of which are on appeal, in *Leckband v. Naylor*, Civ. No. 3-88-167, (D. Minn., May 17, 1988); and *Martinson v. Federal Land Bank of St. Paul*, Civ. No., A2-88-31 (D.N.D., April 21, 1988), which held that based on the legislative history, System institutions improperly used the public auction process because

they did not first afford previous owners their rights of first refusal as prescribed by either paragraph (c) or (d).

Some farmers and other individual commenters agreed with the approach that the FCA took in the proposed regulation for various reasons. One commenter stated that by providing otherwise and following the *Leckband* approach, FCA would be eliminating opportunities for viable parties to buy property. Also, this commenter expressed concern over the excessive costs to the System if institutions are not allowed to sell land through public auction. Some commenters stated that by allowing the previous owner "two bites of the apple", the price of agricultural real estate will be deflated. One lender discussed several instances where property was purchased by a previous owner pursuant to paragraph (c), and then immediately resold at a higher price. The lender asserted that these "flip sales" do not keep the previous owner on the land, as was the intent of Congress. In addition, the commenter asserted that the institutions have already spent their resources, both in time and money finding potential buyers. These "flip sales" negate the competitive bidding process which if operated freely would help to strengthen agricultural land values. One legal aid group expressed a preference for public auctions because they are supervised by sheriff's offices. Thus, an institution is less able to violate the borrower rights provisions. One commenter complained that by affording multiple and subsequent first refusal rights, third party purchasers will suffer.

FCCA states that nothing in the legislative history or the actual language of the 1987 Act requires that a private sale be held prior to a public auction. Congress only intended that the previous owner be given a reasonable opportunity to repurchase the property before it is sold to a third party. This can be accomplished by either the private sale provision or the public auction provision. FCCA asserts that paragraph (a) sets forth the *general* rule that acquired property is subject to the right of first refusal. Paragraphs (b) through (d) set forth procedures to implement the general rule in various situations. FCCA further asserts that the legislative debate, particularly in the Senate Subcommittee on Agricultural Credit of the Senate Committee on Agriculture, Nutrition, and Forestry that authored the language on first refusal rights eventually adopted by Congress, confirms that Congress intended to create two independent, not sequential, rights of first refusal.

FCA believes that the language in the proposed regulation correctly reflects the intent of the Act. There are three rights of first refusal available, as stated in paragraphs (c), (d) and (e). Nothing in the legislative history persuades FCA that these rights must be provided sequentially. The relevant language originated in the Senate, where it was stated that "the former owner be given one opportunity to lease back or buy back his property." The previous owner is not prejudiced as long as he is afforded his right of first refusal *either* in the public auction process *or* by private sale or lease. In both instances, the previous owner is given priority by the institution. However, the System would be prejudiced if an institution is required to provide these rights subsequent to each other. An institution should be afforded the right to sell land publicly or privately in order to get the best price in its judgment, depending on market conditions. To deprive an institution of this right will harm not only the lender, but the entire System and prices of agricultural real estate as well. FCA is mindful of the district court decisions, both of which are on appeal. FCA will monitor the litigation closely and will, if appropriate, reconsider its position at a later time.

Comments suggested that all decisions and denials under this section be appealable. One comment stated that the borrower should have an opportunity to submit evidence rebutting a lender's decision that the borrower did not have resources available to conduct a successful farming or ranching operation, or that the borrower cannot meet all of the payments, terms and conditions of a lease, pursuant to paragraph (d)(2). One comment criticized the regulation for allowing these determinations to be made by the lender. Other individuals suggested that an independent appraisal be permitted. Comments also advocated that the lender disclose the purchase agreement to the borrower so that the borrower is assured that the lender is in compliance with the regulation and statute. One comment requested that all decisions, reasons to reject or deny a right of first refusal, and a borrower's waiver of his rights be in writing.

The suggestions for appeal rights, an opportunity to submit evidence, independent appraisals, written determinations on every decision, and disclosures would provide for a process similar to the credit review committee process. However, the statute does not provide for the credit committee process to review these denials. Instead it provides for first refusal rights in certain

situations to certain previous owners who, *as determined by the lender* (see section 4.36 (a) and (c)(3)), are eligible for these rights.

There were a number of comments advocating that FCA create procedures for the first refusal rights. A farm group suggested that the property must be in the lender's inventory a minimum amount of time before it is sold or leased to other than the previous owner unless the previous owner has waived all his rights. Another comment stated that the regulation should prescribe a definite time period in which a lender must elect to sell the property. A comment from four State attorneys general advocated that the legislative history indicates that the regulations should implement a "homestead protection," i.e., if an institution holds property for an interim period, the institution should offer to lease the residence and other buildings necessary for family maintenance to the previous owner at fair market value; and if an institution decides to separate the residence from other property for sale or lease, the institution should offer to sell or lease the residence to the previous owner at fair market value. One commenter urged that the regulations require System institutions and State attorneys general to issue a statement on the interaction of State and Federal rights.

FCA does not believe that the regulations should require that the acquired property be in the lender's inventory for a period of time before sale or that the lender must decide to sell within a prescribed period of time. With restructuring, mediation, and other rights available to borrowers, foreclosure may be a very lengthy process. Additional time is required to implement either public or private disposition under § 4.36 of the Act, which adds to the length of the foreclosure process. During this time, the loan is not accruing interest, and FCA does not believe that further time delays should be imposed on a lender. In response to the comment on "homestead protection" (as that term is used by the commenters), although institutions may make such offers to the previous owners under the regulations, FCA does not believe that the regulations should require such a protection. First, FCA must assume that if Congress had intended for such a protection to exist, the Act would have so provided. Second, FCA will not dictate such offers be made by an institution. This is a business decision to be made by the lender, not FCA, as an arm's length regulator. Regarding the comment

suggesting that a joint policy statement on State and Federal rights be required, FCA believes that the interaction between State and Federal law is a matter for the courts to decide. Thus, FCA has not adopted this suggestion.

Comments were submitted advocating further restraints on the lender's ability to sell the property and further setting restrictions as to which offer a lender may accept. Comments suggested that the method of financing should be considered to be a term or condition of the sale, thus, advocating that the lender should not be permitted to offer below market or preferential rates to a potential third party purchaser unless the lender is willing to offer the same terms to the previous owner. One comment suggested that the lender finance the previous owner if he can meet *some* terms and conditions as the lender would require of a third party purchaser. A member of Congress commented that some previous owners are apparently being informed that they must exercise their rights of first refusal through a cash purchase. The Congressman suggested that instead of adopting such a policy, lenders should decide on a case-by-case basis whether they will offer financing. This commenter also stated that some previous owners are being informed that if they are not able to obtain financing, any further rights under § 4.37 that they may have are null and void. The member of Congress suggested that these statements be corrected by clarifying the regulations on these issues.

In response to the comments advocating that lenders should finance or consider financing previous owners, the statute specifically states that "financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate." Thus, the decision to finance a previous owner is wholly within the lender's discretion. In response to the Congressman's comment concerning any further rights such as those set forth in § 4.36(b)(5), FCA does not believe the regulations need to be revised on this point because they do not make these other provisions found in § 4.36, dependent on whether a borrower can finance his purchase.

Many suggestions were offered, which, if complied with, would alter the first refusal rights as prescribed by statute. A farm counseling group suggested that if an institution receives a bid during a public auction that is below the appraised value of the property, the previous owner should be made aware of the bid and given 30

days in which to match or exceed the bid. One comment suggested that a previous owner have an exclusive right to purchase the property for 15 days, and that after this time period, the offer should remain open until a new appraisal is performed (thus raising the mandatory acceptance price) or until the institution has entered into a sales contract with a third party. FCA declines to revise the regulation as suggested above because to do so would alter the essence of the first refusal rights as prescribed by Congress.

Other changes to the statute were suggested. One commenter suggested that the 15-day time periods be extended because of inefficient postal service. One comment stated that the regulation should specify 15 business days, instead of 15 days and that this period should be from receipt of the notice. Another commenter stated that the notices must be made clearer than those prescribed by the regulations. A lender suggested that the regulations should state that these rights cannot be sold, assigned or otherwise transferred by the previous owner. The FCCA suggested that "previous owner" be further defined to ensure that the previous owner is the record owner of the real estate. FCCA asserted that the failure to do so may result in a borrower with no ownership interest in the acquired property seeking to exercise the rights of first refusal and this would be contrary to the intent of the Act.

The statute describes specific time periods, either 15 or 30 days, depending on the actions involved, and FCA does not agree that the regulations should be revised to contradict the Congressional intent which is evidenced by the clear statutory language. Regarding the comment requesting that business days be prescribed, if Congress meant business days, as opposed to days, FCA must assume that the legislation would have been written accordingly. This commenter also requested that FCA prescribe 15 days from receipt of the notice. However, the regulation, where applicable, requires this. In response to the comment that stated that the notice was unclear, FCA disagrees and believes that the contents of all notices are clearly spelled out in the regulation. In response to the lender's comment that the regulations should specify that the rights cannot be transferred, FCA does not believe it is necessary to revise the regulations. They clearly state that these rights are applicable only to previous owners. Institutions need not afford these rights to any other individuals. In response to FCCA's comment on the definition of "previous owner," FCA

agrees that the Congressional intent is to keep the record owner on the land, who in all cases may not be the borrower. For example, there may be instances where parents have pledged their land as collateral for their son's loan. Even though the parents are not borrowers, FCA believes that they should have first refusal rights. Thus, FCA agrees and has changed the definition of previous owner in the regulation.

Changes were suggested based on the technical amendments bill, H.R. 3980. For example, one individual suggested that the time periods be changed to conform to H.R. 3980. FCCA suggested that "former borrower" in paragraph (f) be changed to "previous owner." As stated previously, since the technical amendments bill has passed, FCA has changed the regulations to conform to the statute.

Comments were submitted on the requirement in paragraph (b) that the lender determine and document whether the previous owner had the financial resources to avoid foreclosure before granting any first refusal rights. Commenters advocated that even if borrowers had the financial resources to avoid foreclosure, they should still be allowed to exercise first refusal rights. FCCA suggested that "loan foreclosure or" be deleted from paragraph (b), thus deleting the requirement that institutions must document that a borrower did not have the ability to avoid foreclosure. FCCA asserts that the discussion in the Senate subcommittee mark-up which led to insertion of this requirement in paragraph (b) makes clear that the potential abuse which Congress sought to avoid was limited to voluntary conveyances by borrowers who might otherwise take advantage of the first refusal rights by deeding over their mortgaged property, the value of which is then considerably less than the debt against it, and repurchasing such property clear of any encumbrances. FCCA further advocated that institutions should not be required to determine whether the borrower had the financial resources to avoid foreclosure, as long as the institution routinely offers the previous owner his rights of first refusal in all cases where title is acquired by voluntary conveyance.

FCA disagrees with these comments. The law clearly states that agricultural real estate is subject to rights of first refusal, *only if* the borrower did not have the resources to avoid foreclosure. This requirement is in the statute and in the regulation to prohibit the type of transactions described by the FCCA and discussed by Congress. Furthermore,

FCA believes that institutions should be required to make and document these determinations. In response to FCCA's comment that institutions need not make this determination in loan foreclosure cases, FCA asserts that if the borrower has gone through the restructuring, credit review committee and foreclosure processes, institutions already would have made this determination. Thus, there is no burden on the institution in requiring such documentation, and such documentation may avoid potential abuses of the statute. FCA further disagrees that institutions need not make these determinations in a voluntary conveyance situation. It is even more important that these determinations be made when there has been a voluntary conveyance to avoid the potential abuses discussed by FCCA.

FCCA also suggested that "to purchase the property" be inserted after "offer" in the last sentence of paragraph (c)(1) and that "to lease the property" be inserted after "offer" in the last sentence of paragraph (d)(1) for clarity. FCCA commented that banks for cooperatives were not intended to be included in the regulation and to correct this error FCCA suggested that "(except a bank for cooperatives)" be inserted immediately following "institution of the System" in paragraph (a)(1). FCCA as well as individual commenters suggested that "or any portion of such real estate" be inserted in the first sentence of paragraph (c) to conform to the statute. Finally, FCCA commented that for clarity "acquired real estate" be replaced with "acquired property" in paragraph (c)(4) and that in paragraph (d)(2) "rental" be inserted after the word "appraised."

FCA does not agree that the terms "to purchase the property" and "to lease the property" are necessary for clarity. FCA agrees that the regulation must be revised to exclude banks for cooperatives and a definition will be included that exempts banks for cooperatives. FCA agrees with the remainder of the proposed changes and the regulation has been revised accordingly. Also, since the institution is the record owner of acquired property, the definition of previous owner has been changed to clarify that the previous owner was the prior record owner before the institution became the present record owner.

One comment suggested that a definition of "accredited appraiser" be included in the regulation. Another comment suggested a certain approach for appraisers to follow. Finally, a legal aid organization questioned whether

after a right of first refusal is exercised, a lender could foreclose again. No changes to the regulation based on these proposals will be made at this time. Regulations addressing appraisals will be published in a separate Federal Register document on eligibility and lending authorities. In response to the question concerning whether more than one foreclosure is possible after rights of first refusal have been exercised, as long as foreclosure is otherwise appropriate, FCA knows of no reason to prohibit such foreclosures.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart J—Prescription, Subscription and Retirement of Stock

Since paragraphs (e) through (g) of proposed § 615.5255 relate to retirement of stock only in the context of restructuring, and not in the context of default, the paragraphs will become a separate section which will be renumbered and retitled. Comments suggested that borrowers be allowed to retire stock against outstanding principal regardless of whether principal is reduced. FCA assumes that this comment refers to retirement of eligible borrower stock. This will be addressed in a separate Federal Register document on capital adequacy-related regulations. The references to Federal land banks in the proposed regulation have been replaced with farm credit banks in the final regulation and a reference to ACAs or merged associations has been inserted.

PART 618—GENERAL PROVISIONS

Subpart G—Releasing Information—General Comments

In general, one comment suggested that Congress should have access to all documents. Another comment asserted that FCA should specify procedures for disclosure of information and the release of stockholder lists, including to whom a borrower should make his request. One farm group stated that there should be a Systemwide policy on what information is to be released. Some comments suggested that all information used in a lender's decision-making process should be disclosed.

FCA does not believe that the regulations should address Congressional access to such documents since Congressional requests are made pursuant to separate authority. FCA does not agree that the regulations should prescribe procedures since System institutions are better able to establish these procedures. The

suggestion for a Systemwide policy is unnecessary, as the regulations already specify what information is to be released to whom. In response to those comments requesting all information used during a lender's decision-making process be provided, FCA assumes these comments refer to determinations on restructuring applications. This issue was addressed earlier in § 614.4518.

Section 618.8310 Lists of borrowers and stockholders.

One comment suggested that the regulations should refer to the provisions of § 4.12A(b) on alternative communications. The regulations already implement these provisions in § 618.8310(b)(2). One comment stated that the following should be inserted at the end of the second sentence in § 618.8310(b)(3): "the compliance with applicable law, and efforts on behalf of borrowers and stockholders to change laws affecting the banks and associations." FCA does not agree that the above-referenced language should be examples of "permissible purpose." Regarding "compliance with applicable law," FCA is responsible for examining an institution's compliance with laws. Regarding the remainder of the proposed language, FCA believes that this language may encourage efforts to communicate on "social" and "political" causes, or "personal grievances", which are prohibited by the third sentence of § 618.8310(b)(3).

Section 618.8320 Data regarding borrowers and loan applicants.

One commenter suggested that a borrower should be notified that information on his loan has been submitted to a SAG. FCA is not aware of the purpose which such a communication would serve. Thus, FCA does not believe that the regulation should be changed accordingly. In response, to FCCA's comment under § 614.4521 to request that language be inserted in that section to prohibit disclosure of information to mediators where such disclosure would conflict with this subpart, FCA believes that as long as a borrower does not object, his loan information must be provided to the mediator pursuant to section 503 of the 1987 Act, which requires cooperation with requests for information from mediators. The regulation has been revised to address this issue.

Section 618.8325 Disclosure of loan documents.

One comment suggested that paragraph (a)(1) be revised to further define "borrower" as "any signatory who has a valid right of first refusal

under § 614.4522." Another comment suggested that paragraph (b) should not be changed to include appraisals because appraisals should be public not privileged information. On the other hand, FCCA stated that the confidential nature of certain information used in an application process must be protected. FCCA suggested that the following language be inserted following the second sentence in paragraph (b): "To the extent that any appraisal may contain confidential information relating to or identifying third parties, information received by the appraiser, lender or lender's agent under a pledge of nondisclosure, or other information of a confidential nature, the lender shall take any action necessary and appropriate to preserve the confidentiality of such information before providing the appraisal to the borrower."

FCA does not believe that the definition of "borrower" needs to be expanded. To the extent that a previous owner is also a borrower, he will have access to his loan documents. To expand the definition may give previous owners access to documents to which they should not otherwise be entitled. Regarding the issue on appraisals, to the extent that § 618.8320 affords some protection to appraisals as confidential documents, that section is for the benefit of the borrower, and FCA does not believe that § 618.8320 should be changed. Regarding FCCA's concerns, FCA agrees that there are valid concerns in protecting confidential third party information. However, FCA does not believe that institutions should be able to indiscriminately withhold any such information. To do so would effectively deny a borrower his right of access to the appraisal. Thus, FCA has inserted language to protect only identifying characteristics of third parties or their properties where such information is confidential. Although the lender must disclose information in a borrower's appraisal relating to third parties, where that information is confidential, the institution may withhold specific characteristics that would identify the third party or his property.

A farm group suggested that any document relating to the loan should be made available to the borrower. A member of Congress commented that borrowers are not being given access to all applications in violation of the law. Another commenter complained that documents are not being provided "as soon as practical." Comments were received suggesting that borrowers should receive copies of all documents

when they are signed so that no unauthorized changes can be made by the lender. One commenter questioned whether all signatories are entitled to receive copies.

In response to the comment requesting disclosure of any document relating to the loan, FCA does not agree, and believes that disclosure should be limited to documents signed or produced by the borrower. To expand this definition may require lenders to disclose other business, confidential information. In response to those complaints concerning lenders' compliance, the regulations clearly require compliance with the statutory requirement and no change need be made to the regulation. In response to the comment regarding timely disclosure, the regulation prescribes that the documents shall be provided at loan execution. FCA will continue to monitor and examine for timely compliance with statutory and regulatory requirements. In response to the question whether all signatories are entitled to receive copies, as long as they are "borrowers" as defined in this section, they are entitled to receive copies.

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 amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

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

Authority: Secs. 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 4.37, 5.9, 5.17(a)(10); 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 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 § 1.7(b)(1)(B) of the Act but only with respect to loans discounted or

pledged under section § 1.7(b)(1) of the Act.

(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 eligible borrower stock 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, within 3 days of commitment, 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; the notification shall state that the rights

prescribed by sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D and 4.36 will not apply if the loan is pooled;

(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, including the effective interest rate;

(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 qualified lenders 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 qualified lenders an idea of the type and extent of information that should be contained therein. Qualified lenders are not required to follow the format of the sample forms. Qualified lenders 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 is *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

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

(Percentage) _____

Check Applicable Box

☐ This is a **FIXED RATE LOAN**—the stated rate of interest is not subject to change during the life of the loan.

☐ 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 $\pm$ (Percentage). 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).

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

Except with respect to eligible borrower stock 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 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.

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. For example, if the amount of stock or participation certificates held is increased to _____, the effective interest rate will be _____.

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),

☐ 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:

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

☐ 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:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

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

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

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

(3) 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.

(b) A qualified lender offering more than one rate of interest as described in paragraph (a) of this section, shall notify prospective borrowers not later than the time of loan closing of their right to request a review under paragraph (a) of this section.

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;

(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;

(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 required by the qualified lender to support a sound credit decision.

(d) "Application for a loan" or "loan application" means a formal application for an extension of credit from a qualified lender;

(e) "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; and

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

(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 § 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under § 1.7(b)(1).

(h) "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 on a loan application, the notice shall include:

(a) The specific 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 appraisal process, whom to contact at the lender for access to the relevant information, and 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 with ultimate decision-making authority on the loan. 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 or by

any other representative of such person's 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 or restructuring application which the applicant believes will demonstrate that the loan or restructuring applied for is an eligible loan or eligible restructuring plan 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, 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 present the applicant or borrower with a list of three accredited appraisers approved by the qualified lender, and the borrower shall select an appraiser from the list to conduct the appraisal, the cost of which shall be borne by the applicant or borrower. The lender shall provide a copy of the appraisal to the applicant or borrower, and 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. The file shall include minutes of each credit review committee meeting. 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 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 § 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 or 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 or 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 § 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under § 1.7(b)(1) of the Act.

(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 Uninsured voluntary and involuntary accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a System institution, may make voluntary advance conditional payments intended to be applied to future maturities. The monies in the advance conditional payment accounts may be available for return to the borrower in lieu of increasing his loan. System institutions 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). System institutions shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) System institutions 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 and the proceeds from the sale or disposition are not applied to the loan; 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 pursuant to §§ 614.4441 and 614.4443.

The borrower must request such a review within 30 days after receipt of the notice.

§ 614.4515 Restructuring policy and reporting.

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

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

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

(b) Until January 6, 1993, each qualified lender shall submit semiannual reports containing information for each 6-month period, starting from January 6, 1988, to the Farm Credit Administration. The reports shall contain:

(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 that the alternative to restructuring may be foreclosure, and include with such notice:

(1) A copy of the policy of the lender established under § 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; (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 considering all relevant factors including:

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

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

(iii) 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

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

(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, taking into consideration any prior restructurings on the loan, 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 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. 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.

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

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice, by certified mail or in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

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

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

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

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

§ 614.4519 Notice before foreclosure; limitation on foreclosure.

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

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this subpart, and completion of credit review committee

consideration, if applicable. This section shall not prevent a lender from taking any action necessary to avoid the dissipation of assets, or the destruction, diversion or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion or deterioration may occur.

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

§ 614.4520 Review of restructurings for certified institutions; reporting.

(a) Within 9 months after a qualified lender is certified under § 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 is certified to issue preferred stock under § 6.27 of the Act, the board of directors of the Farm Credit Bank 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 § 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under § 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 § 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in § 614.4517(a). 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 consideration of loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and shall present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.

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

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

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

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell 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 sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

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

(ii) To offer to purchase the property at a price less than the appraised value. The notice shall inform the previous owner that any offer must be received within 30 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 15 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 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 property. 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 rental 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 § 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: Secs. 4.3, 4.14B, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2202b, 2243, 2252, 2278b, 2278b-6.

Subpart J—Prescription, Subscription and Retirement of Stock

9. Section 615.5290 is revised to read as follows:

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, where appropriate 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 to the extent provided for in the bylaws of the Bank relating to its capitalization, the

Farm Credit Bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged 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.

(c) Notwithstanding paragraphs (a) and (b) 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: Secs. 4.12, 4.13A, 5.9, 5.10, 5.17; 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 new paragraphs (b)(9) and (b)(10) 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.

(10) Any information or analysis of information requested during the course of mediation by a State agency, governor's office or mediator under any State mediation program certified under

section 501 of the Agricultural Credit Act of 1987, may be provided to the State agency, governor's office or mediator, with the approval of the borrower.

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 a 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 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 (3) of this section) except a bank for cooperatives; and

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

(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. To the extent that an appraisal may contain confidential third party information, the lender may protect such confidential third party information by withholding any information that would disclose identifying characteristics of the third party or his property. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

* * * * *
Dated: September 8, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-20880 Filed 9-13-88; 8:45 am]

BILLING CODE 6750-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 18]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: On August 23, 1988 the President approved Pub. L. 100-418 (102 Stat. 1107), the Omnibus Trade and Competitiveness Act, of 1988, which increases the loan limit to development companies for each identifiable small business concern from \$500,000 to \$750,000. This rule implements that enactment by amending the relevant development company regulations to conform to the new law.

DATE: This rule is effective September 14, 1988.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, 1441 L Street, NW., Room 720-A, Washington, DC 20416, 202/653-6416.

SUPPLEMENTARY INFORMATION: Section 502(2) of the Small Business Investment Act, 15 U.S.C. 696(2), as originally enacted [Pub. L. 85-699, approved August 21, 1958 [72 Stat. 689]] limited loans under that section to \$350,000. This limit was raised to \$500,000 by section 110 Pub. L. 94-305, approved June 4, 1976 (90 Stat. 663). The above-cited statute raises the limit to \$750,000, with a corresponding amendment to section 7(a)(3) of the Small Business Act, 15 U.S.C. 636(a)(3). The rule now promulgated conforms the relevant development company

regulations, 13 CFR 108.502-1, 108.503-4 and 108.503-9, to the statute.

Inasmuch as the amendments here set forth do no more than implement a statutorily mandated loan limit, and inasmuch as immediate notification of the public of the new limit is necessary, notice of proposed rulemaking and public comment thereon are unnecessary, and therefore not required pursuant to 5 U.S.C. 553(d). Since no notice of proposed rulemaking is required by section 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603. With reference to Executive Order 12291, the Agency is certain that the rule cannot achieve an annual effect on the national economy of \$100 million or more. In this regard, the Agency does not expect to make more than 100 loans each year in excess of the former loan limit. At the most, such loans could have such an annual effect of \$25 million.

There are additional reporting, recordkeeping or other compliance requirements inherent in this final rule which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no Federal rules which duplicate, overlap or conflict with this final rule. There are no alternate means to accomplish the objectives of this final rule.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

Accordingly, Part 108 of Title 13, Chapter I of the Code of Federal Regulations, is hereby amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b.

§ 108.502-1 [Amended]

2. Section 108.502-1 *Section 502 loans* is amended by removing in paragraphs (d)(1) and (2) "\$500,000" each time it appears and substituting "\$750,000" therefor.

§ 108.503-4 [Amended]

3. Section 108.503-4 *Project eligibility* is amended by removing from paragraph (c)(2) thereof "\$500,000" and substituting "\$750,000" therefor.

§ 108.503-9 [Amended]

4. Section 108.503-9 *Debenture financing* is amended by removing from paragraph (a)(8), immediately before the