

# FREQUENTLY ASKED QUESTIONS (FAQs) ON BORROWER RIGHTS

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*These FAQs are specific to the provisions of the FCA Borrower Rights rules and do not address all situations that may be encountered.*

## GENERAL

### 1. What are borrower rights?

Borrower rights are loan and collateral actions that farmers, ranchers, and producers or harvester of aquatic products are entitled by law to receive when seeking extensions of credit from Farm Credit System (System) institutions. Extensions of credit include certain servicing actions on a loan as well as applying for a loan.

[Sections 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14B, 4.14C, 4.14D, 4.14E and 4.36 of the Act; part 617 of FCA regulations and § 618.8325].

### 2. Which “borrowers” are afforded borrower rights?

Borrower rights apply to loan applications from, and loans made to, farmers, ranchers, and producers or harvesters of aquatic products. The loans may be for any agricultural or aquatic purpose or 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. Borrower rights do not extend to loans made under the System's rural home lending authority.

[Sections 4.13B and 4.14A(a)(5) of the Act; § 617.7000].

### 3. Do loan guarantors have borrower rights?

Only in limited situations. Guarantors, or individuals pledging security for a loan, do not receive borrower rights for adverse credit decisions or distressed loan servicing because they are not the ones applying for the extension of credit. They may be eligible for the right of first refusal if they are the previous owner(s) of acquired agricultural real estate.

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[Sections 4.13B and 4.14A of the Act; §§ 617.7000, 617.7300, 617.7410, 617.7610(a), & 617.7615(a)].

### **4. Do borrower rights apply if a loan is unsecured?**

Yes. Borrower rights are not contingent upon a loan's having collateral or whether that collateral is real estate or chattel.

[Sections 4.13B and 4.14A(a)(3) of the Act; §§ 617.7000, 617.7300, & 617.7410].

### **5. Does a qualified lender have to provide borrower rights when some or all of the collateral is “at-risk”?**

Normally, yes. Borrower rights do not prevent a qualified lender from taking necessary actions to protect collateral when there is a reasonable basis to believe the collateral will be destroyed, consumed, concealed, converted or permanently removed from the State in which the collateral is located. Qualified lenders may protect at-risk collateral regardless of any remaining time on an outstanding distressed loan servicing notice or the status of a restructuring application. The protection of at-risk collateral is an exception to borrower rights for extreme circumstances and should not be used to avoid offering restructuring rights. Borrower rights still have to be provided on the loan, unless the entire debt had to be foreclosed upon in order to protect the at-risk collateral.

[Section 4.14A(j) of the Act; §§ 617.7410, 617.7415(a)(3), & 617.7425].

### **6. Are loan assumption requests considered loan applications for borrower rights purposes?**

Yes. Applying to assume a loan is considered a loan application. If a loan assumption request is rejected by a qualified lender, the applicant is entitled to receive notice of the adverse credit decision, which includes information on the right to request a review of the decision by the Credit Review Committee.

[Sections 4.13B and 4.14(b)(1) of the Act; §§ 617.7000, 617.7015(a) and (c), & 617.7300].

### **7. Is an agricultural loan designated for sale into the secondary market exempt from borrower rights?**

Yes, but only for 180 days. The 180-day period begins on the date the agricultural loan is designated for sale into a secondary market (designations generally occur at the time the loans are made). Thereafter, borrower rights apply from the 181st day until the loan is actually sold into a secondary market. Once sold into a secondary market, the loan is again exempt from borrower rights.

[Section 4.14A(a)(5)(B) of the Act; § 617.7015(b)].

### **8. Do borrower rights have to be offered on agricultural loans covered by a Long Term Standby Purchase Commitment (LTSPC)?**

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Yes, except for the first 180 days. Agricultural loans covered by LTSPCs are exempt from borrower rights for 180 days, beginning on the date the loans were designated for sale into a secondary market. Notwithstanding the terms of the LTSPC, these loans have borrower rights after the 180-day period has passed, continuing until the commitment to purchase the loans is “activated.” We consider loans covered by an LTSPC to be “sold” when the commitment to purchase them is executed and when title to or possession of the loans is exchanged.

[Section 4.14A(a)(5)(B) of the Act; § 617.7015(b)].

### **9. What constitutes an applicant’s or borrower’s receipt of notice of an adverse credit decision?**

Generally, receipt occurs when the applicant or borrower (or an agent of such) is in actual possession of the notice. To document receipt of adverse credit decisions related to loan restructurings, FCA rules require the qualified lender to send the notice in a manner requiring acknowledgment by the borrower. While there is no similar requirement in FCA rules for adverse loan application decisions, FCA encourages qualified lenders to follow the same practices as those for adverse restructuring decisions.

[Section 4.14(b) of the Act; §§ 617.7300(c) & 617.7420(b) and (c)(3)].

### **10. How does a qualified lender demonstrate an applicant’s or borrower’s receipt of an adverse credit decision when the applicant or borrower refuses delivery?**

Qualified lenders may establish the date an applicant or borrower receives an adverse credit decision by sending the initial adverse credit decision by certified mail to the last known address of the applicant or borrower. If this certified mailing is undeliverable after the U.S. Post Office has made two attempts, qualified lenders are encouraged to re-send adverse credit notices by regular mail. Qualified lenders following this two-step practice may then determine receipt or acceptance of the notice three to five business days after the regular mail notice is postmarked by the U.S. Post Office.

[Section 4.14(b) of the Act; §§ 617.7300(c) & 617.7420(b) and (c)(3)].

## **LOAN APPLICATIONS**

### **11. What are the notice requirements for adverse credit decisions on loan applications?**

A qualified lender is required to notify an applicant as soon as possible of his or her loan application was denied or approved for less than the amount requested. The notice must state the specific reason(s) for the decision, inform the applicant(s) that he or she has the right to request a review of the decision before the Credit Review Committee, and briefly explain the process for seeking a review.

[Section 4.13B(a) of the Act; §§ 617.7300 & 617.7310].

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### **12. How specific must a qualified lender be in the notice to the applicant(s) when providing the reasons for the adverse credit decision?**

Applicants have a right to know all the reasons leading to a denial of credit. Qualified lenders making an adverse credit decision must include in the notice the specific reason(s) for the decision. Including critical assumptions used in the decision-making process, as well as any other information, enables the applicant(s) to make an informed decision on whether to seek a review of the decision.

[Section 4.13B(a) of the Act; § 617.7300(a)].

### **13. When a qualified lender issues an adverse credit decision on a loan application, does it have to give the applicant(s) copies of its collateral evaluations?**

Yes. If a primary reason for the adverse credit decision is the value of collateral, then a copy of the relevant collateral evaluation(s) is included with the decision letter. For additional information on releasing collateral evaluations, see the “Collateral Evaluations” section of these FAQs.

[Sections 4.13A and 4.14(d) of the Act; § 617.7310(c) and (d)].

## **DISTRESSED LOANS**

### **14. Must a loan be delinquent to be considered distressed?**

No. While most loans will be delinquent when they are identified as distressed, delinquency is not required. A distressed loan is a loan that the borrower does not have the financial *capacity* to pay according to its terms. To consider a loan distressed, the qualified lender must find one of the following: (1) adverse financial and repayment trends exist, (2) there is a monetary default (delinquency), or (3) one or both of the prior two conditions, along with inadequate collateralization, present a high probability of loss to the qualified lender. Examples of financial adversity may include a crop failure, the loss of a contract for the sale of the agricultural product, dramatic changes in the source or amount of funds available for repayment of the loan (e.g. unanticipated fluctuations in crop, dairy, or livestock prices), or rapid increases in input costs for the farming operation.

[Section 4.14A(a)(3) of the Act; §§ 617.7000 & 617.7415(a)(5)].

### **15. Is a 30-day delinquency sufficient to consider a loan distressed?**

Maybe. The determination of whether a loan is distressed is typically done on a case-by-case basis. In some instances, a repeated 30-day delinquency, coupled with a declining financial condition, could be sufficient reason to identify a loan as distressed. However, a 30-day delinquency by itself may not necessarily indicate the loan is distressed. We encourage qualified lenders to avoid automatically treating any agricultural loan that is 30 days past due as distressed. Qualified lenders should analyze each loan and the circumstances surrounding the delinquency before considering it distressed.

[Section 4.14A(a)(3) of the Act; §§ 617.7000 & 617.7400].

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## DISTRESSED LOAN NOTICES

### 16. What is the purpose of the non-foreclosure notice?

The non-foreclosure notice informs the borrower(s) that his or her loan has been identified as distressed and that the borrower(s) has the right to request restructuring of the loan. If the borrower(s) does not apply for loan restructuring or if the loan is restructured and the borrower does not perform under the restructuring plan, the qualified lender must send another notice of restructuring opportunity (the 45-day notice) before proceeding to foreclosure.

[Section 4.14A(b)(1) of the Act; §§ 617.7410(a)(1) & 617.7410(e)].

### 17. What is the purpose of the 45-day notice?

The 45-day notice informs the borrower(s) that (1) the loan has been identified as distressed, (2) the borrower has the right to request restructuring of the loan, (3) the alternative to loan restructuring may be foreclosure, and (4) if the loan is restructured and the borrower does not perform under the restructuring plan, the lender may initiate foreclosure without further notice. The 45-day notice allows the qualified lender to proceed toward foreclosure without further restructuring notice to the borrower if the borrower does not apply for loan restructuring. However, the borrower must still be provided notice of the foreclosure action pursuant to State law requirements.

[Section 4.14A(b)(2) of the Act; §§ 617.7410(a)(2), 617.7410(e) & 617.7425].

### 18. How does a qualified lender decide which notice to send?

It is more appropriate to use the non-foreclosure notice in situations where there is a reasonable expectation that the distress to the loan can be cured and that foreclosure can be avoided. The 45-day notice is best used when the situation causing the distress is sufficiently severe to create a high probability of foreclosure action.

[Sections 4.13B(b) & 4.14A(b) of the Act; § 617.7410].

### 19. Which distressed loan notice is sent to borrowers with unsecured loans?

FCA rules provide for either the non-foreclosure notice or the 45-day notice to be sent when a loan is identified as distressed. However, the type of notice to send to an unsecured *distressed* loan is problematic because there is no liquidation action (foreclosure) on uncollateralized loans; just the possibility that the qualified lender may pursue deficiency judgment action. In lieu of the 45-day notice we expect qualified lenders to send borrowers with unsecured distressed loans a modified version of the 45-day notice. The notice may be modified to replace the term "foreclosure" with another appropriate term, qualified such as a deficiency judgment, to inform the borrower of the qualified lender's intention to pursue legal proceedings on the unsecured debt.

[Sections 4.14A(a)(2), (a)(4) and (b) of the Act; § 617.7410].

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### **20. Which distressed loan notice is sent before a qualified lender may act to protect collateral it fears is at risk?**

None. Regardless of whether the collateral is real estate or chattels, when there is a reasonable basis for believing collateral is at risk, a qualified lender does not have to send a distressed loan notice before taking legal action to protect the collateral for a loan. While the qualified lender does not have to provide a distressed loan notice before acting to protect the at-risk collateral, it must still send a distressed loan notice at the same time, or immediately after, it acts to protect the collateral. There is only one exception to this requirement: when the entire debt must be foreclosed upon to protect the collateral.

[Section 4.14A(j) of the Act; §§ 617.7400(b)(1)].

### **21. May distressed loan notices be used as collection notices or to “warn” chronically delinquent borrowers?**

No. A distressed loan notice is not a collection notice; it is a notice of the opportunity to seek restructuring of a distressed loan. Distressed loan notices are specific notices provided to borrowers who are facing financial difficulties of the type contemplated under borrower rights. Sending a distressed loan notice obligates the qualified lender to follow borrower rights requirements until the distress to the loan is cured or the loan is foreclosed upon.

[Sections 4.13B(b), 4.14A(a)(3) and 4.14A(b) of the Act; §§ 617.7000 & 617.7410(a)].

### **22. If the distress to a loan is resolved and then recurs, must another distressed loan notice be sent?**

Probably. Generally, once the distress to a loan is cured, the borrower rights process is concluded, and, if the loan is later identified as again being distressed, the process begins anew. For example, if the distress to the loan was delinquency on loan payments and the borrower “cures” the delinquency by making all accrued payments, including any penalties, the qualified lender is prohibited from initiating foreclosure on the loan. If the loan again becomes distressed (even if from payment delinquency), the qualified lender must send a new distressed loan notice. Only in the case of a borrower who was initially sent the 45-day notice, whose loan distress was resolved through a restructuring, and who did not perform under the restructuring plan is no additional distressed loan notice required before the qualified lender pursues foreclosure action. However, the borrower must still be provided notice of the foreclosure action pursuant to State law requirements.

[Section 4.14D of the Act; §§ 617.7400(c), 617.7410(e) & 617.7425].

### **23. Is a qualified lender required to send a *new* distressed loan notice to the estate of a deceased borrower if the borrower died before making application for distressed loan restructuring?**

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No. The estate of the borrower is not technically eligible for distressed loan servicing, but may be eligible for the right of first refusal. We do, however, strongly encourage the qualified lender to voluntarily provide the executor of the estate with both notice and a 45-day waiting period before pursuing foreclosure. In the alternative, we expect the qualified lender to send the executor a letter explaining that: (1) the borrower was sent a notice that the loan was distressed; (2) the borrower had the opportunity to submit a restructuring application; (3) no restructuring application was received from the borrower; and (4) the qualified lender is instituting foreclosure proceedings.

[Sections 4.13B(b) and 4.14A(b) of the Act; §§ 617.7410 & 617.7425].

### **DISTRESSED LOAN RESTRUCTURING**

#### **24. Is a restructuring application from the borrower required for the qualified lender to consider restructuring a distressed loan?**

No. A qualified lender may propose, on its own, a restructuring plan to a borrower whose loan is distressed. Congress specifically authorized this action by the lender to ensure that all distressed loans are considered for restructuring, not just the loans of those borrowers who apply.

[Section 4.14A(d)(2) of the Act; § 617.7410(g)].

#### **25. If a qualified lender accepts a loan restructuring application after the due date stated in the distressed loan notice, is the lender obligated to process the application under borrower rights?**

Yes. If a qualified lender accepts a restructuring application offered in response to a distressed loan notice after the date specified in the notice the qualified lender must process the application in accordance with borrower rights requirements. The Farm Credit Act specifically provides for a qualified lender to initiate restructuring of a distressed loan in the absence of an application from a borrower. In keeping with the purpose and intent of borrower rights, we liken the qualified lender's acceptance of a late application to the qualified lender voluntarily considering restructuring of the loan.

[Section 4.14A(d) of the Act; § 617.7410(g)].

#### **26. May a qualified lender consider a borrower's treatment of collateral when reviewing a restructuring application?**

Yes. When considering an application for restructuring, a qualified lender may consider whether the borrower has the management skills necessary to protect collateral from diversion or other risks. This would generally occur in situations in which the qualified lender had to act to protect collateral believed to be at-risk or in which there was a conversion of collateral proceeds.

[Section 4.14A(d)(1)(C) and (D) of the Act; § 617.7415(a)(3) & (4)].

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### **27. Must an existing guarantor for a loan consent to a restructuring plan before it may be approved?**

No. Guarantors do not have borrower rights for loan restructuring and are not the ones applying for the extension of credit. However, appropriate steps may be taken to transfer the guarantee to the restructured loan (for example, the lender may require the guarantor to sign the restructured loan note or guarantee agreement). At the time of loan making, qualified lenders may want to notify borrowers that any subsequent restructuring of a loan that currently has guarantors may require the guarantors to renew or re-pledge the guarantee.

[Sections 4.14A(a)(1) and (d)(1) of the Act; §§ 617.7000, 617.7415(a)].

### **28. What are the notice requirements for adverse credit decisions on applications for loan restructuring?**

Qualified lenders making adverse credit decisions on requests for loan restructuring are required to notify the applicant(s) that a request was denied within 15 days of the conclusion of negotiations. The notice must state the specific reason(s) for the decision, inform the applicant(s) of his or her right to request a review of the decision before the Credit Review Committee, and briefly explain the process for seeking a review. A copy of the relevant collateral evaluation(s) is included with the decision letter if the reason for the adverse credit decision is the value of collateral.

[Sections 4.13B and 4.14 of the Act; § 617.7420].

### **29. When does the 15 days for issuing a notice of adverse credit decisions on restructuring applications start?**

An adverse credit decision on a restructuring request must be provided within 15 days of the conclusion of negotiations. Negotiations in this context are meant to be a cooperative effort between the qualified lender and the borrower to develop the best restructuring plan possible. The 15-day period does not begin when the lender receives a signed application for restructuring and a proposed restructuring plan from the borrower. Rather, it begins when (1) the qualified lender has obtained information sufficient to make a safe and sound credit restructuring decision and (2) the qualified lender has attempted to address any deficiency in the information provided by the borrower.

[Section 4.14A(c) and (d) of the Act; §§ 617.7410(g), 617.7415(c), & 617.7420].

## CREDIT REVIEW COMMITTEES

### **30. Who serves on a Credit Review Committee?**

The qualified lender forming a Credit Review Committee determines its size and composition, but at least one farmer-board member (a.k.a. stockholder-elected director) of the direct lender institution must serve on the committee. The loan officer/decision maker may *not* be on the committee.

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[Section 4.14(a)(2) of the Act; § 617.7305].

### **31. Who forms a Credit Review Committee when the direct lender must obtain its supervising bank's approval on a credit decision?**

Generally, a Credit Review Committee is formed at the direct lender level. In the case of non-direct lender approval actions, the committee may be formed at either the direct lender level or the approval level (supervising bank). If the Credit Review Committee will be formed at the approval level (supervising bank), then the committee must, at a minimum, include a member who is a supervising bank director from the direct lender where the loan application originated. If there is no such director at the supervising bank, then one of the Credit Review Committee members must be a farmer board member from the direct lender. The rules that prohibit the loan officer/decision maker from serving on a Credit Review Committee still applies.

[Section 4.14(a) of the Act; § 617.7305].

### **32. What decisions are reviewed by the Credit Review Committee?**

On the request of an applicant or borrower, adverse credit decisions on loan applications and loan restructuring requests are subject to review by the qualified lender's Credit Review Committee. Collateral evaluations used in adverse credit decisions are also subject to review by the committee. The Credit Review Committee has the final decision-making authority on the matter under review.

[Sections 4.14(b) and (d) of the Act; §§ 617.7300, 617.7310(d), & 617.7420(c)].

### **33. How long does an applicant or borrower have after he or she receives an adverse credit decision to request a review by the Credit Review Committee?**

Applicants for agricultural loans have 30 days and applicants for loan restructuring have 7 days after receipt of an adverse credit decision to request a Credit Review Committee review of an adverse credit decision. To ensure that the appropriate amount of time is provided to seek a review of an adverse credit decision, FCA encourages qualified lenders to send adverse credit decisions by certified mail. If a qualified lender fails to achieve delivery by certified mail because the applicant or borrower refuses service, qualified lenders may rely on the guidance provided in FAQ 10.

[Section 4.14(b) of the Act; §§ 617.7300(c) & 617.7420(c)(3)].

### **34. May applicant(s) or borrower(s) appear before the Credit Review Committee?**

Yes. Applicants and borrowers may make personal appearances before the committee and be accompanied by counsel or other representatives. Applicants and borrowers may also submit evidence to support information in the loan application or loan restructuring requests, and they may obtain an independent collateral evaluation in support of a challenge to a credit decision.

[Sections 4.14(b) and (d) of the Act; §§ 617.7300(d) & 617.7310].

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### COLLATERAL EVALUATIONS

#### **35. Does a qualified lender have to give a borrower copies of collateral evaluations it prepared or acquired?**

Yes. On the request of the borrower, a qualified lender must provide copies of all collateral evaluations of the borrower's assets made or used by the qualified lender. The qualified lender may not limit the copies provided to just those collateral evaluations used in an adverse credit decision but must provide all collateral evaluations in the borrower's file.

[Section 4.13A of the Act; §§ 617.7310(c), 617.7420(c)(4) & 618.8325(b)].

#### **36. When releasing a collateral evaluation, may confidential information be withheld, such as comparables or environmental assessments?**

Yes. Qualified lenders may withhold confidential information, but only to the extent that a collateral evaluation contains confidential third-party information. The qualified lender may protect such confidential third-party information by withholding any information that would disclose identifying characteristics of the third party or his or her property.

[Section 4.13A of the Act; § 618.8325(b)].

#### **37. May applicant(s) or borrower(s) be charged for a copy of the collateral evaluation(s)?**

At least one copy of the collateral evaluation(s) must be provided free of charge. The qualified lender may assess reasonable copying charges for any additional copies requested or if the request is made in a situation where the application for credit was withdrawn before the qualified lender provided notice of its decision.

[Section 4.13A of Act; § 618.8325(b)].

### RIGHT OF FIRST REFUSAL

#### **38. What is the right of first refusal?**

The right of first refusal is the right to be offered the first opportunity to lease or purchase agricultural real estate that a System institution acquired through foreclosure or voluntary conveyance. The institution does not have to offer financing with this right. The right of first refusal does not apply to non-real estate collateral.

[Sections 4.36(a) and (f) of the Act; §§ 617.7610 & 617.7615].

#### **39. Who has the right of first refusal?**

The previous record owner(s) of the acquired agricultural real estate has the right of first refusal. The right only exists when the System institution determines the property was acquired because the *borrower* did not have the financial resources to avoid a foreclosure

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action. While the borrower's ability to avoid foreclosure determines if the right of first refusal applies, the right of first refusal belongs to the previous owner(s).

[Section 4.36(a) of the Act; §§ 617.7600, 617.7610(a) & 617.7615(a)].

### **40. What is the difference between a borrower and previous owner when it comes to the right of first refusal?**

A borrower is the one who was, or is currently, in a lending relationship with the System institution. The previous owner is the individual(s) or entity that was the record title holder to the property before the foreclosure or voluntary conveyance. In many instances, the borrower and the previous owner will be the same individual(s) or entity, but in situations where the collateral for the loan was offered by a guarantor or other party, that person has the right to lease or purchase his or her property back in the event the borrower defaults on the loan.

[Section 4.36(a) of the Act; § 617.7600].

### **41. Do previous owners of property acquired through a deficiency judgment have the right of first refusal?**

No. Because of the numerous distinct laws governing the right to obtain deficiency judgments, FCA does not consider deficiency judgments as essential parts of foreclosures. Rather, they are related actions that can sometimes be combined with foreclosures. Therefore, property acquired as a result of collection under a deficiency judgment would not be subject to the right of first refusal.

[Sections 4.14A(a)(4) and 4.36 of the Act; § 617.7600].

### **42. Does a System institution have to offer the right of first refusal when the property was acquired through a bankruptcy action?**

Yes. Property is generally acquired in a bankruptcy proceeding by the lender obtaining a relief from stay to foreclose on the real estate. Thus, the eventual acquisition of the property by the System institution is the result of a foreclosure action and the right of first refusal applies.

[Section 4.36(a) of the Act; § 617.7600].

### **43. To whom does the institution send the notice of right of first refusal when the borrower, who was also the previous owner, is in bankruptcy?**

System institutions may follow the instructions set forth in § 617.7410(c) and (d) of FCA rules when sending distressed loan notices to borrowers in bankruptcy, with the exception that the notice does not go to all obligors, only to the previous owner(s).

[Section 4.36 of the Act; §§ 617.7410(c) and (d) & 617.7625].

### **44. Does a notice of right of first refusal have to be sent if a System institution decides to sell acquired property through a public auction?**

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No, but institutions have to give the previous owner(s) notice of the public auction before, or at the same time as, public notice of the auction is made. The notice has to contain all relevant information, such as the time, place, and opening bid for the auction, to enable the previous owner(s) to decide if he or she wants to participate in the auction. The goal of the right of first refusal is achieved if the previous owner(s) puts in a bid for the property. The institution must accept the previous owner's bid when it is the highest bid or it ties with the highest bid.

[Section 4.36(d) of the Act; § 617.7620].

### **45. If the previous owner declines the right of first refusal before the statutorily provided timelimit has expired, may the institution proceed right away with selling the property to others?**

No. The Farm Credit Act gives the previous owner 30 calendar days to respond to the opportunity to purchase the acquired property (15 days for leasing opportunities), and the previous owner is entitled to the full 30 days. Even if the previous owner responds before that time has expired, he or she has the remaining time to change his or her mind. Likewise, the failure of the previous owner to respond still requires the institution to wait until the 30-day period has passed before proceeding to sell the property to others (15 days for leasing opportunities). Furthermore, a System institution may not ask the previous owner to respond sooner than the number of days established by statute.

[Section 4.36(b)(2) and (c)(2) of the Act; §§ 617.7610(a)(2) & 617.7615(a)(2)].

### **46. Does the System institution have to accept an offer by the previous owner(s) to buy the acquired property for less than appraised market value?**

No. A System institution may either accept or reject an offer by the previous owner(s) for less than the appraised market value of the property.

[Section 4.36(b)(4) and (c)(4) of the Act; §§ 617.7610(c) & 617.7615(c)].

### **47. When does a System institution have to re-offer acquired property to the previous owner(s)?**

System institutions must give a previous owner a second opportunity to re-acquire the property in two situations: (1) when the institution is considering a third-party offer for below the appraised value *and* the previous owner made a below-market offer on the property in response to the original notice, or (2) when the institution is considering offering the acquired property to a third party on different terms or conditions than those offered to the previous owner. While a System institution does not have to accept a below-market appraisal offer from a previous owner(s), the institution may not later sell the property to a third party for below-market value or under different terms and conditions without first giving the previous owner(s) another opportunity to acquire the property.

[Section 4.36(b)(5) and (c)(6) of the Act; §§ 617.7610(c)(3) & 617.7615(c)(2)].

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### **48. If the previous owner did not respond to the initial offer to re-acquire the property, does the System institution have to re-offer the property to the previous owner before selling it to a third party for below the appraised value?**

No. If the previous owner expressed no interest in purchasing or leasing the property, the institution is not required by the Farm Credit Act to send a second notice to the previous owner (but may be required to do so under State law). While System institutions are not required to do so, they may, in keeping with the spirit of the law, give a previous owner who did not respond to the initial notice the opportunity to purchase or lease the property at the same value that a third party has offered.

[Section 4.36 of the Act; §§ 617.7610 & 617.7615].

## **WAIVERS/LOAN SALES**

### **49. May a qualified lender waive borrower rights to facilitate a sale of the loan?**

No. Borrower rights are part of the agricultural credit extended by the qualified lender and belong to the borrower, not the lender. It is therefore the borrower's choice whether to relinquish these rights to facilitate a loan sale.

[Sections 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14B, 4.14C, 4.14D, 4.14E and 4.36 of the Act; § 617.7015].

### **50. May a qualified lender ask a borrower to waive future borrower rights as part of a current restructuring?**

No. Qualified lenders may not ask for, or accept, a waiver of future borrower rights as part of a restructuring decision.

[Sections 4.13B, 4.14, 4.14A, 4.14D, 4.14E and 4.36 of the Act; § 617.7415].

### **51. Are there any situations where borrower rights may be waived?**

Yes. A waiver of borrower rights is permitted for three types of transactions: (1) a loan guaranteed by the Small Business Administration, (2) certain loan sales, and (3) certain loan syndications. In all other instances waivers are not permitted. For more information on allowable waivers of borrower rights, see FCA rules at § 617.7010(b) and (c).

[Sections 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14B, 4.14C, 4.14D, 4.14E and 4.36 of the Act; §§ 617.7010(b) and (c) & 617.7015(c)].