

(f) Title and ownership of leased assets;

(g) Title and licensing for motor vehicles;

(h) Liability associated with ownership, including any environmental hazards or risks;

(i) Insurance requirements for both the lessor and lessee;

(j) Classification of leases in accordance with generally accepted accounting principles; and

(k) Tax treatment of lease transactions and associated risks.

§ 616.6400 Documentation.

Each institution must document that any asset it leases is within its statutory authority.

§ 616.6500 Investment in leased assets.

An institution may acquire property to be leased that is consistent with current or planned leasing programs.

§ 616.6600 Leasing limit.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limit in subpart J of part 614 of this chapter.

§ 616.6700 Stock purchase requirements.

(a) Each System institution, except the Farm Credit Leasing Services Corporation, making an equipment lease under titles II or III of the Act must require the lessee to buy or own at least one share of stock or one participation certificate in the institution making the lease, in accordance with its by-laws.

(b) The disclosure requirements of § 615.5250(a) and (b) of this chapter apply to stock (or participation certificates) bought as a condition for obtaining a lease.

§ 616.6800 Disclosure requirements.

(a) Each System institution must give to each lessee a copy of all lease documents signed by the lessee within a reasonable time following lease closing.

(b) Each System institution must make its decision on a lease application as soon as possible and provide prompt written notice of its decision to the applicant.

PART 617—BORROWER RIGHTS

Subpart A—General

Sec.

617.7000 Definitions

617.7005 When may electronic communications be used in the borrower rights process?

617.7010 May borrower rights be waived?

617.7015 What happens to borrower rights when a loan is sold?

Subpart B—Disclosure of Effective Interest Rates

617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?

617.7105 When must a qualified lender disclose the effective interest rate to a borrower?

617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?

617.7115 How should a qualified lender disclose loan origination charges?

617.7120 How should a qualified lender present the disclosures to a borrower?

617.7125 How should a qualified lender determine the effective interest rate?

617.7130 What initial disclosures must a qualified lender make to a borrower?

617.7135 What subsequent disclosures must a qualified lender make to a borrower?

Subpart C—Disclosure of Differential Interest Rates

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

Subpart D—Actions on Applications; Review of Credit Decisions

617.7300 When acting on a loan application, what are the notice requirements and review rights?

617.7305 What is a CRC and who are the members?

617.7310 What is the review process of the CRC?

617.7315 What records must the qualified lender maintain on behalf of the CRC?

Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

617.7400 What protections exist for borrowers who meet all loan obligations?

617.7405 On what policies are loan restructurings based?

§ 617.7000

12 CFR Ch. VI (1–1–06 Edition)

- 617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?
- 617.7415 How does a qualified lender decide to restructure a loan?
- 617.7420 How will a decision on an application for restructuring be issued?
- 617.7425 What type of notice should be given to a borrower before foreclosure?
- 617.7430 Are institutions required to participate in state agricultural loan mediation programs?

Subpart F—Distressed Loan Restructuring Directive

- 617.7500 What is a directive used for and what may it require?
- 617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?
- 617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?
- 617.7515 How does the FCA decide whether to issue a directive?
- 617.7520 How does the FCA issue a directive and when will it be effective?
- 617.7525 May FCA use other enforcement actions?

Subpart G—Right of First Refusal

- 617.7600 What are the definitions used in this subpart?
- 617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?
- 617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?
- 617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?
- 617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?
- 617.7625 Whom should the System institution notify?
- 617.7630 Does this Federal requirement affect any state property laws?

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SOURCE: 69 FR 10907, 10908, Mar. 9, 2004, unless otherwise noted.

Subpart A—General

§ 617.7000 Definitions.

For the purposes of this part, the following terms apply:

Adjustable rate loan means a loan where the interest rate payable over the term of the loan may change. This includes adjustable rate, variable rate, or other similarly designated loans.

Adverse credit decision means a credit decision where a qualified lender:

- (1) Decides not to make a loan to an applicant;
- (2) Approves a loan in an amount less than the applicant requested; or
- (3) Denies an application for restructuring.

Applicant means any person who completes and executes a loan application from a qualified lender.

Application for restructuring means a written request from a borrower to restructure a distressed loan. The request must be submitted on the appropriate forms prescribed by the qualified lender and accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

Distressed loan means a loan that the borrower does not have the financial capacity to pay according to its terms, as determined by the qualified lender, and 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 (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the qualified lender.

Effective interest rate means a measure of the cost of credit, expressed as an annual percentage rate, that shows the effect of the following costs, if any, on the interest rate on a loan charged by a qualified lender to a borrower:

- (1) The amount of any stock or participation certificates that a borrower is required to buy to obtain the loan; and
- (2) Any loan origination charges paid by a borrower to a qualified lender to obtain the loan.

Foreclosure proceeding means:

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

Farm Credit Administration

§617.7010

a non-interest-earning asset 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 titles I and II of the Act, to effect collection of a non-accrual or distressed loan.

Independent evaluator means an individual who is a qualified evaluator and who satisfies the standards of §614.4260, subpart F of this chapter, and the standards set by the qualified lender for the type of property to be evaluated. The independent evaluator may not be an employee or agent of a qualified lender or have a relationship with the lender or any of its officers or directors in contravention of part 612 of this chapter.

Interest rate means the stated contract rate of interest.

Loan means an extension of credit 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 that directly relates to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

Loan application means a complete oral or written request for an extension of credit made in accordance with a qualified lender's procedures for the type of credit requested. An application is complete when the qualified lender receives all the information normally obtained and used in evaluating applications for credit. This information may include credit reports, supporting information for the credit requested, and reports by governmental agencies or other persons necessary to guarantee, insure, or provide security for the credit or collateral.

Qualified lender means:

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

(2) Each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (commonly referred to as an other financing institution), but only with respect to loans discounted or pledged under section 1.7(b)(1).

Restructure and restructuring of a loan means a 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.

[69 FR 10907, 10908, Mar. 9, 2004, as amended at 69 FR 16459, Mar. 30, 2004]

§617.7005 When may electronic communications be used in the borrower rights process?

Qualified lenders may use, with the parties' agreement, electronic commerce (E-commerce), including electronic communications for borrower rights disclosures. Part 609 of this chapter addresses when a qualified lender may use E-commerce. Consistent with these rules, a qualified lender should interpret part 617 broadly to allow electronic transmissions, communications, records, and submissions. However, electronic communications may not be used for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when a borrower's primary residence secures the loan. In these instances, a qualified lender must use paper disclosures.

§617.7010 May borrower rights be waived?

(a) A qualified lender may not obtain a waiver of borrower rights, except as indicated in paragraphs (b) and (c) of this section.

(b) A borrower may waive rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration or in connection with a loan sale as provided in §617.7015. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly explain the rights the borrower is being asked to waive.

(c) A borrower may waive all borrower rights provided for in part 617 of these regulations in connection with a loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a "loan syndication" is a multi-lender transaction in which each member of the