

comments received on EIR disclosure in developing these proposed amendments and will address changes to other borrower rights regulations in a separate rulemaking.

This proposed rule, however, does not address comments on electronic or Web-based compliance with borrower rights regulations. These issues are subject to FCA's E-commerce rule.<sup>4</sup> System institutions should interpret the terms used in this part broadly to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited.

### III. Section-by-Section Analysis

To make our regulations easier to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to a new part 617. The existing part 617, Referral of Known or Suspected Criminal Violations, will be moved to part 612, Standards of Conduct, in a new subpart B, and redesignated as §§ 612.2300 through 612.2303.

In the section-by-section analysis below, we explain our proposed amendments to the current EIR disclosure regulations. We also address comments received pertinent to loan information and EIR disclosures.

#### Subpart A—General

##### Section 617.7000—Definitions

Proposed § 617.7000 defines “effective interest rate” generally as a measure of the cost of credit that, expressed as an annual percentage rate, shows the effect of borrower stock or participation certificates purchased and loan origination charges on the stated interest rate of a loan. The new definition would replace the current definition of EIR in § 614.4366(b). Proposed § 617.7125 explains how a qualified lender should determine the effective interest rate.

In addition, the proposed amendments reword the definitions of “adjustable rate loan” and “interest rate” in plain language. We also propose to eliminate the existing definitions of “fixed rate loan,” “loan origination charges,” and “standard adjustments factors” because: (1) The term “fixed rate loan” is not used in the proposed rule; (2) the term “loan origination charges” is addressed separately in proposed § 617.7115; and (3) a qualified

lender would disclose “the specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan” under proposed § 617.7130(b)(5); thus, eliminating the need for these definitions. The two existing definitions for “loan” and “qualified lender” are reworded slightly but we did not intend to make any substantive change.

#### Subpart B—Disclosure of Effective Interest Rates

##### Section 617.7100—Who Must Make and Who Is Entitled To Receive an Effective Interest Rate Disclosure?

Proposed § 617.7100(a) states a basic requirement of section 4.13 of the Act, that a qualified lender is required to provide an effective interest rate disclosure to borrowers for all loans not subject to TILA. Paragraph (a) would replace current § 614.4365.

In its letter requesting regulatory relief, the FCC generally recommended that we amend the current rule to allow a single notice be sent when a borrower has multiple loans that close on the same day. The FCC also suggested that amendments allow a lender to apply a notice given in connection with a loan closing to any future indebtedness by the borrower. The Act requires that an EIR disclosure be made for “all” loans. Because each loan is a separate legal obligation and carries its own interest rate and specific terms and conditions, we believe that each loan requires a separate disclosure. However, separate disclosures of multiple loans closed simultaneously may be included in the same notice to the borrower.

Paragraph (b) provides what a lender must do when there is more than one borrower obligated on a loan. Current § 614.4367(d) allows the lender to satisfy the disclosure requirements by providing the disclosure to any one of the primary obligors on the loan. The proposed rule will give borrowers the opportunity to designate, in writing, the person they wish to receive the disclosures. If the borrowers do not designate a particular recipient, the lender must provide the disclosures to at least one borrower primarily liable for repayment of the loan. FCA believes that allowing borrowers, and not just the lender, to designate who will receive the disclosures is more in keeping with the intent of the “borrower rights” provisions of the Act and will not be burdensome to the lender.

##### Section 617.7105—When Must a Qualified Lender Disclose the Effective Interest Rate to a Borrower?

Section 4.13 of the Act requires EIR disclosure not later than the time of loan closing for all covered loans. This rule is easy to apply for new customers, and proposed paragraph (a) contains this general directive for prospective borrowers.

However, the question of when a new EIR disclosure is required to be made to an existing borrower—for example when the borrower “renews” or “refinances” a loan—has met with varied interpretations under FCA's current regulations. FCC suggests amending the regulatory definition of “loan” to include “any renewal or refinancing of such a loan, but not including any interest rate conversion, reamortization, or other loan servicing action that does not result in a new obligation between a borrower and a qualified lender.” In general, FCA agrees with the substance of this suggestion. However, rather than change our definition of “loan” (which is taken directly from the Act), we instead propose revising the criteria that establish the circumstances in which EIR disclosure is necessary. Paragraph (b), therefore, provides that a qualified lender must make a new EIR disclosure to existing borrowers on or before the date the borrower:

- (1) Executes a new promissory note or other comparable evidence of indebtedness;
- (2) Purchases additional stock as a condition of obtaining new funds from the qualified lender; or
- (3) Pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

As the FCC points out, a new note (or other comparable document)—ordinarily executed for a renewal or a refinancing—creates a new, binding legal obligation and therefore must be treated as a new “loan” for disclosure purposes. While “reamortization” may not require a new disclosure if none of the above conditions is met, any new interest rate on the reamortized loan must be disclosed under the subsequent disclosure requirements of proposed § 617.7135.

Section 4.13(a)(3) of the Act also requires qualified lenders to disclose the effect of “any” purchases of stock or participation certificates or loan origination charges. As a result, new disclosure must be made any time a borrower is required to buy stock or pay additional loan origination charges in connection with a lending transaction,

<sup>4</sup> See 67 FR 16627, April 8, 2002.