

whether under an existing or new promissory note.

Paragraph (b)(2) of proposed § 617.7105 is intended to clarify that no new disclosure is required for additional advances made under an open-end line of credit or similar preexisting arrangement unless one of the three aforementioned conditions occurs. For these types of loans, normally only one EIR disclosure—at the time of loan closing—is required.

Section 617.7110—How Should a Qualified Lender Disclose the Cost of Borrower Stock or Participation Certificates?

The Act and current FCA regulations require a qualified lender to disclose the effect of any purchases of stock or participation certificates on the effective rate of interest on a loan. Where the lender has a per loan stock purchase requirement, this rule is straightforward to apply. However, many System lenders have adopted per member, rather than per loan, stock purchase requirements. This raises the issue of whether previously purchased stock must be included in the EIR for new loans to existing borrowers/stockholders.

Historically, we have advised institutions that stock must be included in the EIR disclosure because stock was generally issued on a per loan basis. After reviewing current stock issuance practices, we have concluded that the Act does not require a qualified lender to include the cost of previously purchased stock in the EIR calculation for new loans. Amounts previously paid to a lender in connection with an earlier, separate loan transaction are not properly included in the EIR calculation as “interest” on a subsequent loan because the borrower is not paying that amount to the lender and the lender is not receiving that amount from the borrower in connection with the new “loan.”

Furthermore, shares of stock in a corporation, such as an FCS lending institution, are personal property, constituting an asset of the owner. Therefore, we believe FCS borrower stock should not be treated as a continuing liability or cost to a borrower. Section 4.13(a)(5) of the Act requires that borrowers be informed that they are purchasing an at-risk equity investment in the System institution. We believe that treating the stock purchase as a continuing cost to the borrower (by continuing to include it in EIR calculations) is at odds with the nature of an at-risk equity investment and confuses the meaning of the section 4.13(a)(5) required disclosure.

We have incorporated this new guidance into the proposed rule by providing that the cost of borrower stock must be included in the EIR calculation only at the time the stock is purchased in connection with a loan transaction, whether purchased with cash, included in a promissory note, or otherwise paid. For subsequent loans made to existing borrowers, only the cost of new stock, if any, purchased in connection with the transaction must be included in the EIR calculation.

Section 617.7115—How Should a Qualified Lender Disclose Loan Origination and Other Charges?

The Act and current FCA regulations require qualified lenders to disclose the effect of “any loan origination charges” on the “effective rate of interest” on a loan. However, the Act does not define “loan origination charges,” and FCA’s current regulatory definition (in § 614.4366(f)) does not clearly state which charges should and which should not be included in the EIR calculation. In adopting the current definition of “loan origination charges,” FCA looked, in part, to similar terms used in Federal Reserve Board regulations implementing TILA (Regulation Z).

The FCC commented that it did not seem likely that Congress intended System institutions to consider or include in their EIR calculations all or most of the charges listed in Regulation Z and that FCA has not explicitly incorporated Regulation Z’s “Charges excluded from the finance charge” (12 CFR 226.4(c)). The FCC suggests that since TILA, by its terms, does not apply to agricultural loans, FCA should not look to Regulation Z for guidance in determining what constitutes “loan origination charges” under the Act. FCC recommends defining loan origination charges to include “stock, participation certificates, and fees paid in lieu of interest (points, origination fees, etc.).” The FCC further states that this would be “a clearer, more concise, less burdensome definition that would comport with the relevant requirements of the Act, especially in view of the fact that no other lender is required to give an effective interest rate disclosure when it makes an agricultural loan.”

We generally agree with FCC’s comments. First, Congress provided, in section 4.13 of the Act, that the EIR disclosure is for loans not subject to TILA. Congress also specifically excluded agricultural loans from TILA requirements because it believed that consumer disclosures were not

appropriate.⁵ Therefore, while Regulation Z may provide some background guidance, we believe it is not appropriate to graft TILA and Regulation Z definitions or requirements onto Farm Credit Act EIR disclosure requirements.

Second, we agree that only origination fees, points, and similar charges paid to a lender by the borrower should be considered “interest” charges and be included in the EIR calculation. However, we also believe that all costs a borrower is required to pay in order to obtain a loan from a qualified lender should be disclosed in some fashion in order to satisfy the intent of section 4.13 of the Act. Therefore, proposed § 617.7115 provides guidance on which loan charges must be included in the EIR calculation and which charges must be disclosed separately.

Paragraph (a) is intended to replace and clarify the current definition of “loan origination charges” found in § 614.4366(f). It requires that any one-time charge paid by a borrower to a qualified lender in consideration for making a loan be included in the EIR calculation as a loan origination charge. Loan origination charges include, but are not limited to, loan origination fees, application fees, and conversion fees charged by the lender. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as “points.”

Ordinarily, any general administrative or processing fee charged by a lender to recover the lender’s operating costs constitutes added lending costs to borrowers that must be included in the loan origination charges under paragraph (a). However, loan origination charges should not include any general fee collected by a lender on behalf of third parties or other fees charged by the lender for specific services rendered to borrowers.

We added paragraph (b) to provide that all other payments that a borrower is required to make to obtain a loan, but not included in the loan origination charges described in paragraph (a) in the EIR calculation, must be disclosed separately at the time of loan closing. These include, but are not limited to, real or personal property taxes, guarantee fees, or insurance premiums paid by borrowers to third parties, and appraisal fees paid either to the lender or to a third party.

We believe only charges that could reasonably be defined as “interest”

⁵ See S. Rep. 96–338, at 24 (1980), reprinted in 1980 U.S.C.A.N. 259