

M. How Is the Right of First Refusal Applied? [§ 617.7600 et seq.]

Section 4.36 of the Act provides a previous owner the right of first refusal to repurchase property when a System institution forecloses or a borrower voluntarily conveys agricultural real estate because the borrower did not have the financial resources to avoid foreclosure.

1. Does the Right of First Refusal Apply When the System Institution Acquires Agricultural Real Estate Through a Bankruptcy Liquidation? [§ 617.7600]

The right of first refusal does apply to agricultural real estate acquired through a bankruptcy proceeding. When a System institution gets relief from the automatic stay, or the borrower conveys the property as part of a bankruptcy plan, the right of first refusal applies because the System institution gains possession of the property through foreclosure or voluntary conveyance.

2. Who Is the Previous Owner? [§ 617.7600]

Existing § 614.4522(a)(2) defines a previous owner as a prior record holder who was a borrower or whose land was used as collateral for a loan to a System borrower. The FCC commented that we should clarify that a previous owner does not include a mortgagor or grantor of an equivalent interest in agricultural real estate unless such person is also the borrower. As previously stated, the term refers to the legal title holder of the agricultural real estate used as collateral for the loan. The right of first refusal is not transferable and belongs only to the legal title holder. We invite the FCC to comment further if we have not adequately responded to the comment.

3. May the Previous Owner Waive the Right of First Refusal as a Part of a Debt Settlement?

Borrower rights, which include the right of first refusal, were enacted by Congress to address an unequal bargaining position that exists between a borrower and a qualified lender. In most debt settlement situations, the borrower is in an unequal bargaining position. Thus, permitting waivers for this borrower would contradict Congress's intent.

4. Must a System Institution Document Whether the Previous Owner Had the Financial Resources To Avoid Foreclosure or Voluntary Conveyance? [§ 617.7605]

Whether the borrower had the financial resources to avoid either foreclosure or voluntarily conveying the agricultural real estate is a condition in

the Act that must be met before the right of first refusal may be offered. We continue to require each System institution to document whether the borrower did or did not have the financial resources to avoid foreclosure or voluntary conveyance.

We propose moving existing § 615.4522(b) to § 617.7605.

5. May a System Institution Require a Previous Owner To Pay an Escrow Deposit When Buying the Property at a Public Auction? [§ 617.7620]

If an escrow deposit is an advertised requirement of the successful bidder in a public auction, then the previous owner, as the successful bidder, must also provide this escrow payment. The previous owner must be given an equal opportunity to repurchase the property in a public auction and should be subject to the same conditions as any other successful bidder.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government Securities, Investments, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 609, 614, 615, and 617, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 609—ELECTRONIC COMMERCE

1. The authority citation for part 609 continues to read as follows:

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub L. 106–229 (114 Stat. 464).

Subpart A—General Rules

2. Amend § 609.910(c) by revising the fourth sentence to read as follows:

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106–229) (E–SIGN).

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(c) * * * Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 617, subparts A, D, E, and G of this chapter. * * *

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PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§ 614.4336 [Removed]

4. Remove § 614.4336.

Subpart L—Actions on Applications; Review Credit Decisions

Subpart L [Removed]

5. Remove subpart L, consisting of §§ 614.4440 through 614.4444.

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

§§ 614.4514–614.4522 [Removed]

6. Remove §§ 614.4514 through 614.4522 in subpart N.