

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

Subpart J—Retirement of Equities

8. Section 615.5280(h) is revised to read as follows:

§ 615.5280 Retirement in event of default.

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 617.7405, 614.7410, 617.7420, and 617.7425 of this chapter that contain the information required by this section.

9. Amend § 615.5290 by revising paragraphs (a) and (b) to read as follows:

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

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PART 617—BORROWER RIGHTS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

11. Amend § 617.7000 by adding the following definitions alphabetically to read as follows:

§ 617.7000 Definitions.

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

(1) Decides not to make a loan to an applicant;

(2) Makes 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:

(1) 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; or

(2) A borrower's bankruptcy plan of reorganization.

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.

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Foreclosure proceeding means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a noninterest-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 title I and II of the Act, to effect collection of a nonaccrual 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.

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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.

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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 forebear on, a loan in any way that will provide the best opportunity for the borrower to have a reasonable probability of retiring debts and returning to a viable operation.

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12. Amend subpart A by adding new §§ 617.7005, 617.7010, and 617.7015 to read as follows:

§ 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 an applicant's or 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 paragraph (b) of this section.

(b) A borrower may waive the following rights: