

(1) Rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration.

(2) In connection with a loan sale as provided in § 617.7015.

(c) All waivers must be voluntary and in writing. The qualified lender must first clearly explain the rights the borrower is being asked to waive and provide a written explanation of such rights.

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

(a) A loan made by a qualified lender and subsequently sold, in whole or in part, to another qualified lender is subject to the borrower rights provisions of title IV of the Act.

(b) What happens when a qualified lender sells a loan into the secondary market?

(1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, and designated for sale into a secondary market at the time the loan was made.

(2) Borrower rights apply to a loan designated for sale under paragraph (b)(1) of this section but not sold into a secondary market during the 180-day period that begins on the date of designation. The provisions of paragraph (b)(1) of this section will subsequently apply on the date of sale if the loan is later sold into a secondary market.

(c) What happens when a qualified lender sells a loan to a non-qualified lender?

(1) Except for loans sold to another qualified lender or designated for sale into a secondary market, a qualified lender must comply with one of the following requirements before selling a loan or interest in a loan subject to borrower rights:

(i) The qualified lender and borrower must agree to include provisions in the loan contract with the borrower, or a written modification thereto, that ensure that the buyer of the loan will be obligated to provide the borrower the same rights a qualified lender must provide; or

(ii) The qualified lender must obtain from the borrower a signed written consent to the sale, which clearly states the borrower waives statutory borrower rights.

(2) Before the qualified lender obtains the borrower's consent to the sale of the loan and the waiver of borrower rights under paragraph (c)(1)(ii) of this section,

the qualified lender must disclose in writing to the borrower:

(i) A complete description of the statutory rights the borrower will waive;

(ii) Any changes in the loan terms or conditions that will occur if the qualified lender does not sell the loan;

(iii) That waiving borrower rights will not become effective unless the qualified lender sells the loan; and

(iv) That borrower rights will become effective again if any qualified lender repurchases the loan or any interest in the loan.

(3) The consent to the loan sale and waiver of borrower rights shall have no effect until the qualified lender sells the loan. Borrower rights become effective again if any qualified lender repurchases the loan or any interest in the loan.

(4) A qualified lender may not make a loan conditioned on the borrower consenting to the loan's sale and a waiver of borrower rights.

13. Amend part 617 by adding new subparts D, E, F, and G to read as follows:

Subpart D—Actions on Applications; Review of Credit Decisions

Sec.

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 D—Actions on Applications; Review of Credit Decisions

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

Each qualified lender must make its decision on a loan application as quickly as possible. The qualified lender must provide prompt written notice of its decision to the applicant. The qualified lender is required to notify all primary applicants. If a loan application has more than one primary applicant, the qualified lender may send the original notice to the applicant designated to receive notices and may send copies to all other applicants. If the qualified lender makes an adverse credit decision on a loan application, the notice must include:

(a) The specific reasons for the qualified lender's decision;

(b) A statement that the applicant may request a review of the decision;

(c) A statement that a written request for review must be made within 30 days after the applicant receives the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the independent collateral evaluation review process, whom to contact for access to information, and the applicant's right to appear in person before the credit review committee (CRC).

§ 617.7305 What is a CRC and who are the members?

The board of directors of each qualified lender must establish one or more CRCs to review adverse credit decisions made by a qualified lender. The CRC may only review adverse credit decisions at the request of the applicant or borrower. The CRC has the ultimate decision making authority on the loan or application under review. CRC members are selected by the board of directors of each qualified lender and must include at least one of the qualified lender's farmer-elected board members. The loan officer involved in the adverse credit decision being reviewed may not serve on the CRC when it reviews that loan.

§ 617.7310 What is the review process of the CRC?

(a) *How will an applicant or borrower know when the CRC will consider the review request?* The qualified lender must inform the applicant or borrower 15 days in advance of the CRC meeting where the applicant or borrower's request will be reviewed.

(b) *Who may make a personal appearance before the CRC?* Each applicant or borrower who has requested a review may appear in person before the CRC. The applicant or borrower may be accompanied by counsel or other representative when seeking a reversal of a decision on a loan or an application for restructuring.

(c) *What documents may the CRC consider?* An applicant or borrower may submit any documents or other evidence to support the information contained in the loan or application for restructuring. The documents should demonstrate that the application for a loan or restructuring satisfies the credit standards of the qualified lender and is an eligible loan or application for restructuring. Additionally, the applicant or borrower is entitled to a copy of each independent collateral evaluation used by the qualified lender.

(d) *May an applicant obtain a new collateral evaluation even if collateral was not a reason for the adverse credit decision?* As part of a CRC review, an applicant may request an independent collateral evaluation of the agricultural real estate securing the loan or being offered as security, regardless of