Module: Compliance
Section: Borrower Rights - Disclosure of Loan Information
EM-620

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Authority and Purpose

The Farm Credit Act of 1971, as amended by the Farm Credit Amendments Act of 1985 and the Agricultural Credit Act of 1987, extends consumer protection to Farm Credit System (System) loans. FCA Regulations 12 CFR Part 614, Subpart K requires qualified lenders to provide truth-in-lending type disclosures on loans exempt from the Truth in Lending Act (TILA). In addition, FCA Regulation 12 CFR § 614.4336 contains special disclosure requirements relative to loans intended for sale.

The purpose of the disclosure regulations is to set forth loan disclosure requirements to be followed by qualified lenders that facilitate timely and meaningful disclosures to prospective and current borrowers so those individuals may make informed decisions.

Applicability and Exemptions

This subpart applies only to loans made by qualified lenders where the loans are not subject to the TILA. Qualified lender is defined as including a System institution (other than a Bank for Cooperatives) that makes loans. For the purposes of this subpart, a loan is defined to mean a loan to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose or other credit needs of the borrower.

Listed below are the disclosure requirements relative to initial disclosures on all loans, disclosure requirements on loan sales, disclosures for those loans that will or may be pooled, subsequent disclosures due to adjusting interest rates, disclosures to multiple obligors, and disclosures of differential interest rates.

<u>Initial Disclosure, § 614.4367(a) and § 614.4367(e)</u>

The following information shall be provided in writing to a prospective borrower not later than the time of the loan closing:

- The current rate of interest on the loans;
- The amount and frequency of interest rate adjustments during the term of adjustable rate loans, as well as specific standard adjustment factors affecting the interest rate adjustment, or if there are no limitations on the amount and frequency of the adjustments, a statement to that effect;
- The current effective interest rate, taking into account stock purchases or participation certificate purchases and any loan origination charges, with one or more representative examples of the impact of these amounts on the stated interest rate;
- A statement that the stock is at risk (except for eligible borrower stock under § 4.9A of the Act); and
- A statement indicating the various types of loan options available to borrowers with an explanation of the terms and borrower rights that apply to each type of loan.

<u>Borrower Rights Requirements on Loan Sales, § 614.4336</u>

Each institution that contemplates selling a loan or an interest therein that is subject to borrower rights shall either comply with the requirements of FCA Regulation 12 CFR § 614.4367(b) for loans intended for sale to Farmer Mac, or comply with one of the following two requirements for loans intended for sale to institutions that are neither System institutions nor Farmer Mac:

- Include provisions in the contract with the borrower that obligate the purchaser to provide the borrower with borrower rights; or

- Obtain a signed, written consent to the sale from the borrower which waives borrower rights. The consent to the sale and the borrower rights waiver shall have no effect until the loan is actually sold and shall be ineffective if the lender or any other System institution repurchases the loan or any interest therein.

Before obtaining the borrower's consent to the sale or waiver of borrower rights, the institution must disclose in writing the following:

- A full and complete description of the borrower's statutory rights that are being waived;

- Any changes in the loan terms or conditions that will occur if the loan is not sold; and

- The waiver of borrower rights will not become effective unless the loan is actually sold and shall become ineffective if the lender or any other System institution repurchases the loan.

In addition to the above requirements on loan sales, FCA Regulation 12 CFR § 614.4336(c) provides that the making of a loan may not be conditioned on the borrower's consent to the sale or waiver of borrower rights.

Loan Pooling Disclosures, § 614.4367(b)

For loans that will or may be pooled for sale to Farmer Mac, the following disclosures must be made at the time of the loan application:

- That the loan will or may be pooled;

- Within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring right applicable to the loan, or, if the loan is pooled, the borrower will be required to waive the right to have the loan considered for restructuring;

- That rights, if any, under applicable State laws are not waived;

- A statement that the rights prescribed by § 4.14, § 4.14A, § 4.14B, § 4.14C, § 4.14D, and § 4.36 of the Act will not apply if the loan is pooled; and

- Any other terms and conditions that apply to a loan which is pooled that differ from a loan which is not pooled.

Subsequent Disclosures, § 614.4367(c) and § 614.4367(d)

Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing not later than 10 days after the effective date of a change in the interest rate. However, if the interest rate is directly tied to an external index that is widely publicized, the notice of change must be made promptly but not later than 30 days after the change in interest rate.

- The new interest rate on the loan;

- The effective date of the new interest rate; and

- A statement of factors other than the standard adjustment factors that were taken into account in establishing the new rate.

If the stock or participation certificate requirements are changed and the effective interest rate modified as a result, the following information shall be furnished the borrower in writing at least 10 days before the date the action takes effect:

- The new effective interest rate or a representative example;
- The effective date of the new effective interest rate; and
- A statement of the action(s) taken that resulted in the new effective interest rate.

Disclosures to Multiple Obligors, § 614.4367(e)

The disclosure requirements of FCA Regulation 12 CFR § 614.4367(a) through (d) are satisfied for multiple primary obligors on a loan by providing the disclosures to any one of the primary obligors.

Differential Interest Rate Disclosure, § 614.4368

A qualified lender offering more than one interest rate to borrowers shall, at the request of the borrower (either written or oral):

- Review the loan to determine if the proper interest rate is charged; and
- Provide an explanation to the borrower in writing of the basis for the interest rate charged and how the borrower can improve his/her credit status, if necessary, to receive a lower interest rate.

Qualified lenders who offer more than one interest rate shall notify borrowers on all loans no later than loan closing that the borrower may request a review of the loan to determine if the proper interest rate has been established.

Examination Objectives

Determine whether the institution has established policies, procedures, and internal controls to provide reasonable assurance of compliance with FCA Regulations 12 CFR Part 614, Subpart K.

Determine that disclosures are accurate, timely, and complete and obtain corrective action when violations or deficiencies are noted.

Examination Procedures

The following procedures are provided to facilitate an evaluation of loan disclosure requirements for loans not subject to the TILA. Consistent with risk-based examination principles, examiners should add, delete, or modify procedures as needed based on the particular circumstances of the institution.

1. Coordinate compliance examination activities with other members of the examination team and the examiner-in-charge (EIC). Emphasis should be on identifying violations of law and regulation in other areas (e.g., eligibility, scope of financing, lending limits, etc.); integrating those findings with the examination of consumer protection, borrower rights, and financial reporting; and concluding on management's ability to comply with laws and regulations.

2. Review and evaluate the adequacy of policies, procedures, and internal controls that are in place to ensure compliance with the disclosure requirements of FCA Regulations 12 CFR Part 614, Subpart K. This should include a review of standard forms prescribed for use in the district, institution, or branch. (Model disclosure forms are included in the appropriate FCA Regulations.)

3. Review a sufficient number of loans not subject to the TILA to determine whether the institution is disclosing all required information within the time frames prescribed.

4. Determine whether the information provided in the disclosure was accurate as of the date the loan documents were executed. The effective interest rate and any other computed amounts should be verified.

5. Determine whether borrowers requesting a review of the interest rates charged on their loans have been responded to as required by the regulations.

6. Complete workpapers FCA 6060 and FCA 6065, if necessary, in conjunction with an evaluation of the institution's compliance with the requirements of loan disclosure regulations.

7. Utilize discussions with institution managers as needed to gather information and discuss procedures and practices followed by institution personnel to ensure compliance with laws and regulations.

8. Conclude whether the institution is adequately complying with FCA Regulations 12 CFR Part 614, Subpart K. If not, ascertain whether the conclusion of noncompliance is supported by adequate documentation of the specific noncompliance.

9. Consider the possibility of civil money penalties if significant, repeated, and uncorrected violations are surfaced.

10. Discuss tentative conclusions and examination findings with the examiner(s) responsible for evaluating management.

11. Discuss items of concern, scope of work performed, and conclusions with the EIC and with the appropriate institution manager. Obtain a response regarding the cause(s) of deficiencies or weaknesses and anticipated corrective actions.

12. Organize and compile, if necessary, violations of law and regulation into an appendix for the Report of Examination.

13. Prepare a leadsheet or other summary document to provide workpaper support for the work performed and the conclusions reached.