

# Module: Compliance

## Section: Borrower Rights - Notice of Action and Review

### EM-621

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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 L, requires qualified lenders to provide prompt written notice of action on applications, including approval or reduction of the approved loan amount or reasons for loan denial. The notice must also make clear that the applicant has the right to ask for a review of any adverse action taken on the loan request. Qualified lenders must also establish one or more review committees to review adverse decisions at an applicant's request and must promptly notify the applicant in writing of its decision and the reasons for the decision.

The purpose of Subpart L is to set forth the processes to be used in notifying applicants or borrowers of the actions taken on their loan or restructuring applications as well as reviews of credit decisions.

#### Applicability and Exemptions

Part 614, Subpart L, applies to loans and restructurings made by qualified lenders. 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 notification requirements on applications, credit review committee requirements, and requirements relative to the review process.

#### Notification Requirements, § 614.4441

System institutions are required to provide prompt written notification of loan application decisions (approval or adverse) to loan applicants. In cases involving more than one primary obligor, the notification may be provided to any one of the primary obligors. When the decision is adverse (denial of credit, denial of restructuring request, or approval of an amount less than requested), the notification must inform the loan applicant of the following:

- The specific reasons for the lender's action;
- The applicant's right to request a review of the decision;
- An explanation that the request for review must be made in writing within 30 days after the applicant's receipt of the notice; and
- A brief explanation of the process for seeking review of the decision, including the appraisal process; whom to contact for information at the lender's place of business; and the applicant's right to appear before the credit review committee.

For guidance on what constitutes prompt written notification, refer to the notification requirements of Federal Reserve Board Regulation 12 CFR § 202.9, which are described in the Consumer Protection Equal Credit Opportunity section of this module.

NOTE: Per FCA Regulation 12 CFR § 614.4200(b), when loan closing will occur more than 15

days after notification of the action, the notice of approval shall set forth the terms and conditions on which credit will be extended.

#### Credit Review Committee (CRC), § 614.4442

Qualified lenders are required to establish one or more CRCs. The membership of each CRC shall include at least one board member. Because Federal Land Bank Associations are not qualified lenders, the board member for their CRC must be from the affiliated district bank. The CRC is authorized to review adverse credit decisions and has ultimate decision-making authority on the loan under review.

A loan officer involved in the adverse credit decision cannot serve on the CRC when that decision is under review. Beyond this regulatory requirement, the appearance of objectivity will be enhanced if any subordinates of the loan officer involved in the adverse decision or the loan officer's supervisors are also excluded from the CRC. Examiner judgment is necessary since no regulatory requirement exists to exclude an officer not involved in the adverse decision and since smaller institutions may be severely limited in the availability of CRC members. The duties of the members of the CRC may not be delegated to any other person, except the duties of the board member may be performed from time to time by an alternate board member designated by the board.

#### Review Process, § 614.4443

Applicants for loans or borrowers who have applied for a restructuring are entitled to a review of the credit decision. Each applicant or borrower who has requested a review may appear in person before the CRC and may be accompanied by counsel or other representative of choice. The applicant or borrower may submit any documents or other evidence to support the information contained in the unsuccessful loan or restructuring application to the CRC for its consideration.

An applicant or borrower may request an independent collateral evaluation of property securing the loan. If a request for an independent collateral evaluation is made, the CRC shall, within 30 days, present the applicant or borrower with a list of three independent evaluators and the applicant or borrower will select and engage the services of an evaluator from the list. The costs of a collateral evaluation shall be borne by the applicant or borrower. The CRC shall consider the results of the collateral evaluation in any final determination with respect to the loan or restructuring provided the applicant's or borrower's evaluator provided a copy of the evaluation within 15 business days prior to any scheduled meeting of the CRC.

Collateral evaluations that are not conducted according to Part 614, Subpart F, need not be considered by the CRC. To facilitate proper completion of collateral evaluations, the lender must provide a copy of Part 614, Subpart F, to the borrower to give to the evaluator and a copy signed by the evaluator shall be a required exhibit in the subsequent evaluation report.

The CRC must make every effort to conduct reviews and render decisions expeditiously. The CRC must promptly notify the applicant, in writing, of its decision and the reasons for the decision.

#### Records, § 614.4444

Qualified lenders must maintain a complete file of all requests for review by the CRC, including participation in State mediation programs, and the disposition of each review. The file must also include the minutes of each CRC meeting.

#### **Examination Objectives**

Determine whether the institution has established policies, procedures, and internal controls to provide reasonable assurance that notices of action on loan decisions are provided to applicants in a timely manner and the reviews of such actions comply with the requirements of FCA

Regulations 12 CFR Part 614, Subpart L. In addition, obtain corrective action when violations are identified or when deficiencies in policies, procedures, and internal controls are noted.

### **Examination Procedures**

The following procedures are provided to facilitate an evaluation of notice of action and review requirements. 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 compliance 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 L.
3. Review a sample of rejected applications (requests for new loans, additional credit, and restructuring) to ensure the notifications were timely and included all items required by the regulations.
4. Determine if the lender is providing applicants a list of three accredited collateral evaluators within 30 days of request, and if the collateral evaluation is considered by the CRC in the final determination of the loan or restructuring.
5. Review notifications of CRC decisions and determine that they were timely and contained the reasons for the decision.
6. Review minutes of CRC meetings to ensure the loan officer involved in the adverse decision did not serve on the CRC when that decision was under review and the board member on the committee did not delegate his/her duties except to another board member who was designated by the board.
7. Determine if the immediate supervisor or subordinate of the loan officer involved in the adverse decision is a member of the CRC. If so, examiners should consider reviewing additional CRC decisions in order to ensure their objectivity.
8. Determine whether CRC records are complete and appropriately maintained.
9. Complete workpapers FCA 6060, FCA 6070, and FCA 6075, if necessary, in conjunction with the evaluation of the institution's compliance with the requirements of the regulations.
10. 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.
11. Conclude whether the institution is adequately complying with FCA Regulations 12 CFR Part 614, Subpart L. If not, ascertain whether the conclusion of noncompliance is supported by adequate documentation of the specific noncompliance.
12. Consider the possibility of issuing a borrower rights directive or imposing civil money penalties if significant, repeated, and uncorrected violations are surfaced.
13. Discuss tentative conclusions and examination findings with the examiner(s) responsible for evaluating management.

14. 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.
15. Organize and compile, if necessary, violations of law and regulation into an appendix for the Report of Examination.
16. Prepare a leadsheet or other summary document to provide workpaper support for the work performed and the conclusions reached.