

**§ 614.4330**

(2) The amount of the loan subject to the recourse agreement shall be considered a loan sold with recourse for the purpose of computing permanent capital ratios.

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgement on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

[57 FR 38247, Aug. 24, 1992, as amended at 58 FR 40321, July 28, 1993; 62 FR 51015, Sept. 30, 1997; 64 FR 34517, June 28, 1999; 67 FR 1285, Jan. 10, 2002]

**§ 614.4330 Loan participations.**

Agreements to purchase or sell a participation interest shall be subject to the provisions of § 614.4325 of this subpart, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a loan shall, in addition to meeting the requirements of § 614.4325(d) of this subpart, at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lender, and/or the servicing institution, if different from the lead lender.

**12 CFR Ch. VI (1-1-06 Edition)**

(2) Provide for loan servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of borrower distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the loan participation and termination of the agreement;

(6) Provide for sharing of fees, interest charges, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing a participation interest in a loan.

(b) *Intrasystem participations.* Loans participated between or among Farm Credit System institutions shall meet the borrower eligibility, membership, loan term, loan amount, loan security, and stock purchase requirements of the originating lender.

[57 FR 38247, Aug. 24, 1992, as amended at 67 FR 1285, Jan. 10, 2002]

**§ 614.4335 Borrower stock requirements.**

(a) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's by-laws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock—(1) In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the

## Farm Credit Administration

## § 614.4340

Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

[62 FR 63646, Dec. 2, 1997]

### § 614.4337 Disclosure to borrowers.

When a loan or an interest in a loan other than a participation interest is sold with servicing rights, the disclosure shall be made to the borrower in accordance with this section:

(a) The selling institution shall disclose to the borrower at least 10 days prior to the borrower's next payment date;

(1) The name, address, and telephone number of the purchasing institution;

(2) The name and address of the party to whom payment is to be made;

(3) A description of the impact of the sale on statutory borrower rights after the sale;

(4) Any terms in the agreement that would permit a purchaser to change the terms or conditions of the loan.

(b) A Farm Credit System institution that purchases a loan or a non-participation interest therein shall not take any servicing action that adversely affects the borrower until it ensures that disclosure has been made to the borrower of:

(1) The name, address, and telephone number of the purchasing institution; and

(2) The address where the payment should be sent.

## Subpart I—Loss-Sharing Agreements

### § 614.4340 General.

(a) Upon the approval of the board of directors of the respective Farm Credit System institutions, any System bank, association, or service corporation or service association may enter into an agreement to share loan and other losses with any other institution(s) of the System. As appropriate, a loss-sharing agreement may contain provisions relating to definitions of terms, terms and conditions for activation, determinations of assessment formulas, limitations on assessments, reimbursements, administration, arbitration, and provisions for amendment and termination.

(b) System institutions may agree among themselves to share losses for the purpose of protecting against the impairment of capital stock or participation certificates, or for any other purpose. Agreements may provide for sharing losses that arise in the future or that were recognized by one or more of the signatory institutions before the date of the agreement. Agreements may contain provisions that are not entirely reciprocal among the signatories to the agreement. Loss-sharing agreements can provide for the sharing of loan losses, operating losses, casualty losses, losses on high risk assets, or any other losses.

[49 FR 48910, Dec. 17, 1984, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]