

§ 616.6200

(4) Specify the rights and obligations of the parties and the terms and conditions of the sale;

(5) Contain any terms necessary for the appropriate administration of the lease, including lease servicing and monitoring of the servicer and authorization and conditions for action in the event of lessee distress or default;

(6) Provide for a method of resolution of disagreements arising under the agreement;

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

(8) In the case of lease transactions through agents, comply with § 614.4325(h) of this chapter, reading the term "lease" or "leases" in place of the term "loan" or "loans," as applicable.

(d) *Independent judgment.* Each institution that buys an interest in a lease must make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker. This must occur before the purchase of the interest and before any servicing action that alters the terms of the original agreement. The institution must not delegate such judgment to any person(s) not employed by the institution. A Farm Credit System institution that buys a lease or any interest in a lease may use information, such as appraisals or inspections, provided by the originating or lead lessor, or any intermediary seller or broker; however, the buying Farm Credit System institution must independently evaluate such information when exercising its judgment. The independent judgment must be documented by a payment analysis that considers factors set forth in § 616.6300. The payment analysis must consider such financial and other lessee information as would be required by a prudent lessor and must include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions must adopt procedures to ensure the interests of their respective shareholders are protected in participation between such institutions.

(e) *Sales with recourse.* When a lease or interest in a lease is sold with recourse:

(1) For the purpose of determining the lending and leasing limit in sub-

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

part J of part 614 of this chapter, the lease must be considered, to the extent of the recourse or guaranty, a lease by the buyer to the seller, and in addition, the seller must aggregate the lease with other obligations of the lessee; and

(2) The lease subject to the recourse agreement must be considered an asset sold with recourse for the purpose of computing capital ratios.

(f) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities apply to interests in leases made to similar entities. In applying these provisions, the term "loan" shall be read to include the term "lease" and the term "principal amount" shall be read to include the term "lease amount."

§ 616.6200 Out-of-territory leasing.

A System institution may make leases outside its chartered territory.

§ 616.6300 Leasing policies, procedures, and underwriting standards.

The board of each institution engaged in lease underwriting must adopt a written policy (or policies). Management, at the direction of the board, must develop procedures that reflect lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity must comply with the lending policies and loan underwriting requirements in § 614.4150 of this chapter. An institution engaged in the making, buying, or syndicating of leases also must adopt written policies and procedures that address the additional risks associated with leasing. Written policies and procedures must address the following, if applicable:

(a) Appropriateness of the lease amount, purpose, and terms and conditions, including the residual value established at the inception of the lease;

(b) Process for estimating the leased asset's market value during the lease term;

(c) Types of equipment and facilities the institution will lease;

(d) Remarketing of leased property and associated risks;

(e) Property tax and sales tax reporting;

(f) Title and ownership of leased assets;

(g) Title and licensing for motor vehicles;

(h) Liability associated with ownership, including any environmental hazards or risks;

(i) Insurance requirements for both the lessor and lessee;

(j) Classification of leases in accordance with generally accepted accounting principles; and

(k) Tax treatment of lease transactions and associated risks.

§ 616.6400 Documentation.

Each institution must document that any asset it leases is within its statutory authority.

§ 616.6500 Investment in leased assets.

An institution may acquire property to be leased that is consistent with current or planned leasing programs.

§ 616.6600 Leasing limit.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limit in subpart J of part 614 of this chapter.

§ 616.6700 Stock purchase requirements.

(a) Each System institution, except the Farm Credit Leasing Services Corporation, making an equipment lease under titles II or III of the Act must require the lessee to buy or own at least one share of stock or one participation certificate in the institution making the lease, in accordance with its by-laws.

(b) The disclosure requirements of § 615.5250(a) and (b) of this chapter apply to stock (or participation certificates) bought as a condition for obtaining a lease.

§ 616.6800 Disclosure requirements.

(a) Each System institution must give to each lessee a copy of all lease documents signed by the lessee within a reasonable time following lease closing.

(b) Each System institution must make its decision on a lease application as soon as possible and provide prompt written notice of its decision to the applicant.

PART 617—BORROWER RIGHTS

Subpart A—General

Sec.

617.7000 Definitions

617.7005 When may electronic communications be used in the borrower rights process?

617.7010 May borrower rights be waived?

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

Subpart B—Disclosure of Effective Interest Rates

617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?

617.7105 When must a qualified lender disclose the effective interest rate to a borrower?

617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?

617.7115 How should a qualified lender disclose loan origination charges?

617.7120 How should a qualified lender present the disclosures to a borrower?

617.7125 How should a qualified lender determine the effective interest rate?

617.7130 What initial disclosures must a qualified lender make to a borrower?

617.7135 What subsequent disclosures must a qualified lender make to a borrower?

Subpart C—Disclosure of Differential Interest Rates

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

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?

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 E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

617.7400 What protections exist for borrowers who meet all loan obligations?

617.7405 On what policies are loan restructurings based?