

marketing facility under title VIII of the Act:

(i) Subject to the requirements of paragraph (d) of this section, borrower stock may be retired if the entire loan is sold without recourse.

(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, or an interest is retained that is not a subordinated interest, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirement for the interest retained.

(2) When a loan or an interest therein is sold to a certified agricultural mortgage marketing facility under title VIII of the Act, the stock may be retired; but, in no event may stock be retired below the institution's minimum stock purchase requirement for the portion retained.

(c) 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.

(d) When the loan is sold without recourse to another Farm Credit System institution pursuant to paragraph (b)(1)(i) of this section, the borrower may elect to hold stock in either the selling or purchasing institution.

EFFECTIVE DATE NOTE: At 62 FR 63646, Dec. 2, 1997, § 614.4335 was revised, effective upon the expiration of 30 days after publication in the FEDERAL REGISTER during which either or both houses of Congress are in session. Notice of the effective date will be published in the FEDERAL REGISTER. For the convenience of the user, the revised text is set forth as follows:

§ 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 bylaws 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) 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 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]

§ 614.4336 Borrower rights.

(a) Each institution that contemplates selling a loan or an interest therein that is subject to the borrower rights provisions of title IV of the Act shall either:

(1) For loans intended for sale to a certified agricultural mortgage marketing facility pursuant to title VIII of the Act, comply with the requirements of § 614.4367(b) of this part; or

(2) For loans intended for sale to institutions that are neither Farm Credit System institutions nor certified agricultural mortgage marketing facilities under title VIII of the Act, comply with one of the following two requirements:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the

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purchaser of the loan will be obligated to accord the borrower the same rights "qualified lenders" must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale which explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be ineffective in the event that lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(b) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (a)(2)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(1) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(2) Any changes in the loan terms or conditions that will occur if the loan is not sold;

(3) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(c) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

EFFECTIVE DATE NOTE: At 62 FR 63647, Dec. 2, 1997, § 614.4336 was revised, effective upon the expiration of 30 days after publication in the FEDERAL REGISTER during which either or both houses of Congress are in session. Notice of the effective date will be published in the FEDERAL REGISTER. For the convenience of the user, the revised text is set forth as follows:

§ 614.4336 Borrower rights in connection with loan sales.

(a) *Loan sales to Farm Credit System institutions.* Loans made by qualified lenders (as defined in section 4.14A(a)(6) of the Act) and interests in such loans that are sold to other qualified lenders are subject to the borrower rights provisions of title IV of the Act.

(b) *Loans designated for sale into a secondary market.* (1) Except as provided in paragraph (b)(2) of this section, the borrower rights pro-

visions 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, that is designated for sale into a secondary market at the time it is made.

(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 borrower rights provisions specified as inapplicable pursuant to paragraph (b)(1) of this section shall apply, PROVIDED THAT if the loan is subsequently sold into a secondary market, the borrower rights specified in paragraph (b)(1) of this section become inapplicable beginning on the date of the subsequent sale.

(c) *Other loan sales.* (1) Except for loans sold to another Farm Credit institution or designated for sale into a secondary market, a qualified lender must comply with one of the following two requirements before selling a loan or interest in a loan that is subject to the borrower rights provisions of title IV of the Act:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the purchaser of the loan will be obligated to accord the borrower the same rights qualified lenders must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale that explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(2) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (c)(1)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(i) A full and complete description of the statutory rights that the borrower is asked to relinquish;

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

(iii) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(3) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

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