

## §617.7015

## 12 CFR Ch. VI (1–1–12 Edition)

loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a “loan syndication” is a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower, but does not include a transaction created for the primary purpose of avoiding borrower rights. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly disclose the rights the borrower is waiving. Additionally, the borrower’s written waiver must contain a statement that the borrower was represented by legal counsel in connection with execution of the waiver.

[69 FR 10907, 10908, Mar. 9, 2004, as amended at 70 FR 18968, Apr. 12, 2005]

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

(a) *What happens when a qualified lender sells a loan to another qualified lender?* A loan made by a qualified lender and subsequently sold, in whole or in part, to another qualified lender is subject to the borrower rights provisions of title IV of the Act.

(b) *What happens when a qualified lender sells a loan into the secondary market?* (1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions 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, and designated for sale into a secondary market at the time the loan was made.

(2) Borrower rights apply to a loan designated for sale under paragraph (b)(1) of this section but not sold into a secondary market during the 180-day period that begins on the date of designation. The provisions of paragraph (b)(1) of this section will subsequently apply on the date of sale if the loan is later sold into a secondary market.

(c) *What happens when a qualified lender sells a loan to a nonqualified lender?* (1) Except for loans sold to another qualified lender or designated for sale into a secondary market, a qualified lender must comply with one of the following requirements before selling a

loan or interest in a loan subject to borrower rights:

(i) The qualified lender and borrower must agree to include provisions in the loan contract with the borrower, or a written modification thereto, that ensure that the buyer of the loan will be obligated to provide the borrower the same rights a qualified lender must provide; or

(ii) The qualified lender must obtain from the borrower a signed written consent to the sale, which clearly states the borrower waives statutory borrower rights.

(2) Before the qualified lender obtains the borrower’s consent to the sale of the loan and the waiver of borrower rights under paragraph (c)(1)(ii) of this section, the qualified lender must disclose in writing to the borrower:

(i) A complete description of the statutory rights the borrower will waive;

(ii) Any changes in the loan terms or conditions that will occur if the qualified lender does not sell the loan;

(iii) That waiving borrower rights will not become effective unless the qualified lender sells the loan; and

(iv) That borrower rights will become effective again if any qualified lender repurchases the loan or any interest in the loan.

(3) The consent to the loan sale and waiver of borrower rights shall have no effect until the qualified lender sells the loan. Borrower rights become effective again if any qualified lender repurchases the loan or any interest in the loan.

(4) A qualified lender may not make a loan conditioned on the borrower consenting to the loan’s sale and a waiver of borrower rights.

### Subpart B—Disclosure of Effective Interest Rates

SOURCE: 69 FR 16459, Mar. 30, 2004, unless otherwise noted.

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

(a) A qualified lender must make the disclosures required by subparts B and C of this part to borrowers for all loans