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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.

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§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 not subject to the Truth in Lending Act.

(b) For a single loan involving more than one borrower, a qualified lender is required to provide only one set of disclosures to borrowers. All borrowers may designate, in writing, one person who will receive the effective interest rate disclosure. If the borrowers do not designate a particular recipient, the lender may provide the disclosure to at least one of the borrowers who is primarily liable for repayment of the loan.

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

(a) *Disclosure to prospective borrowers.* A qualified lender must provide written effective interest rate disclosure for each loan no later than the time of loan closing.

(b) *Disclosure to existing borrowers.* (1) A qualified lender must provide a new effective interest rate disclosure to an existing borrower on or before the date:

(i) The borrower executes a new promissory note or other comparable evidence of indebtedness;

(ii) The borrower purchases additional stock or participation certificates as a condition of obtaining new funds from the qualified lender; or

(iii) The borrower pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

(2) A qualified lender is not required to provide a new effective interest rate disclosure when it advances new funds to an existing borrower if none of the conditions of paragraph (b)(1) of this section apply and the advance is made pursuant to a preexisting contract that specifically provides for future advances.

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

The cost of borrower stock or participation certificates must be included in

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the effective interest rate calculation at the time the stock or participation certificate is purchased in connection with a loan transaction. For subsequent loans to existing borrowers, only the cost of new stock or participation certificates, if any, purchased in connection with a new loan or advance of new funds must be included in the effective interest rate calculation for the transaction.

§ 617.7115 How should a qualified lender disclose loan origination charges?

Any one-time charge paid by a borrower to a qualified lender in consideration for making a loan must be included in the effective interest rate as a loan origination charge. These include, but are not limited to, loan origination fees, application fees, and conversion fees. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as "points."

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

A qualified lender must:

(a) Disclose the effective interest rate and other information required by subparts B and C of this part clearly and conspicuously in writing, in a form that is easy to read and understand and that the borrower may keep; and

(b) Not combine the disclosures with any information not directly related to the information required by §§ 617.7130 and 617.7135.

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

(a) A qualified lender must calculate the effective interest rate on a loan using the discounted cash flow method showing the effect of the time value of money.

(b) For all loans, the cash flow stream used for calculating the effective interest rate of a loan must include:

- (1) Principal and interest;
- (2) The cost of stock or participation certificates that a borrower is required

to purchase in connection with the loan; and

(3) Loan origination charges described in § 617.7115.

(c) A qualified lender must establish policies and procedures for EIR disclosures that clearly show the effect of the cost of borrower stock (or participation certificates) and loan origination charges on the interest rate of a loan. A qualified lender must also establish policies and procedures for determining major assumptions used in calculating the effective interest rate, *e.g.*, criteria on how the cost of borrower stock (or participation certificates) and loan origination charges are assigned or allocated among multiple loans obtained by a borrower simultaneously.

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

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

- (1) The interest rate on the loan;
- (2) The effective interest rate of the loan;
- (3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;
- (4) All loan origination charges included in the effective interest rate;
- (5) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and
- (6) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A qualified lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

- (1) The circumstances under which the rate can be adjusted;
- (2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

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(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments;

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan; and

(6) If the borrower's interest rate is directly tied to a widely publicized external index:

(i) How and where the borrower may obtain information on changes to the index; and

(ii) When the qualified lender will provide written notice of changes to the borrower's interest rate.

[69 FR 16459, Mar. 30, 2004, , as amended at 74 FR 67972, Dec. 22, 2009]

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

(a) *Notice of interest rate change.* (1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

(i) The new interest rate on the loan;

(ii) The date on which the new rate is effective; and

(iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change either:

(i) Within forty-five (45) days after the effective date of the change; or

(ii) As part of the borrower's first regularly scheduled billing statement affected by the rate change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice to adjustable rate loan borrowers with interest rates directly tied to a widely publicized external index.* A qualified lender must provide the written disclosure required by §617.7130(b)(6) to applicable borrowers who were not previously given the disclosure no later than the qualified lender's next regularly scheduled cor-

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respondence to those borrowers occurring after April 1, 2010.

(c) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock (or participation certificates) a borrower must own during the term of a loan, the lender must send a written notice to the borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

(1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;

(2) The date on which the new rate is effective; and

(3) The reason for the increase in the borrower stock (or participation certificates) purchase requirement.

[69 FR 16459, Mar. 30, 2004, , as amended at 74 FR 67972, Dec. 22, 2009]

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?

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

[69 FR 16459, Mar. 30, 2004]

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?

Each qualified lender must make its decision on a loan application as quickly as possible. The qualified lender