



DCU BULLETIN

Division of Credit Unions

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Taking Real Estate Security on Personal Property Loans Triggers Consumer Compliance Requirements for Real Estate Loans

In recent exams, we have reviewed loans granted for the purpose of financing (or refinancing) the purchase of personal property where a security interest is also taken in real estate. Most often, the real estate is a personal residence or dwelling. The personal property may include vehicles, vessels, aircraft or other personal property. The credit unions often state that the real estate is taken as security out of an abundance of caution. In some cases, the credit unions market the fact that the interest on the loan may be tax deductible.

We have reviewed this matter and our conclusion is that such loans are subject to federal consumer compliance law requirements applicable to real estate-secured loans if:

- 1. The real estate is a one-four family dwelling;**
- 2. The real estate is used as the borrower's primary or secondary residence; and**
- 3. The real estate is legally at risk of foreclosure upon the borrower's default.**

This conclusion applies without regard to:

- The stated purpose or type of the loan
- The personal property nature of the primary collateral
- Whether the credit union records the security agreement.

The applicable federal laws may include, among others:

- Flood Disaster Protection Act
- Truth In Lending Act and Regulation Z
 - Right of Rescission
 - Home Equity Plan disclosures and restrictions (for open-end credit plans)
 - Consumer Handbook on Adjustable Rate Mortgages (for variable-rate loans)
 - Variable rate disclosures for loans secured by a principal dwelling (required at the time of loan application)
- Home Mortgage Disclosure Act and Regulation C
- Real Estate Settlement Procedures Act
 - HUD-1 or 1A Settlement Statement
 - Good Faith Estimate
 - Mortgage Servicing Transfer Disclosure
 - Affiliated Business Relationship Disclosure
 - Anti-kickback provisions
 - Home Equity Brochure
 - Special Information Booklet
- Home Ownership and Equity Protection Act
- NCUA's rules for obtaining appraisals from a state certified or licensed appraiser (see 12 CFR 741.203(b); 12 CFR Part 722) for any real estate-related transaction

We understand that compliance with these laws will increase costs to the credit union and consumer, and may increase the time to process and close the loans.

Please call Jane Johnson, at (360) 902-0508 if you have any questions about this Bulletin.