



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

December 24, 1986

Office of General Counsel

Elton A. Burky, Esq.  
P.O. Box 549  
27 Main Street  
Pittsfield, Maine 04967

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Dear Mr. Burky:

This is in response to your letter of October 22, 1986, inquiring as to whether each time a Federal credit union (FCU) advances money to a borrower pursuant to an open-end loan agreement, the FCU must inform the borrower that he has a right to rescind the loan agreement.

Your letter states that the FCU you represent handles many consumer real estate loan transactions on an open-end basis. We have interpreted this statement to mean that the FCU loans money to consumers and that, pursuant to the loan agreement, the FCU retains or acquires a security interest in the consumer's principal dwelling. Under these circumstances, the Truth in Lending Act, which is part of the Consumer Credit Protection Act, 15 U.S.C. §1601 et seq., and Regulation Z, 12 C.F.R. §226.1 et seq., control the consumer's right to rescind.

Generally, in the case of a consumer credit transaction in which a security interest is retained or acquired by the creditor in any property which is used as the principal dwelling of the consumer, the consumer has the right to rescind the transaction in the manner set forth in 15 U.S.C. §1635(a). See also, 12 C.F.R. §226.15(a)(1)(i). The term consumer, when used in reference to a credit transaction, characterizes the transaction as one in which the borrower is a natural person and the credit extended is primarily for personal, family, or household purposes. 15 U.S.C. §1602(h). The consumer does not have a right to rescind advances under a preexisting open-end credit plan if a security interest has already been retained or acquired by the creditor and such advances are in accordance with a previously established credit limit for such plan, 15 U.S.C. §1635(e)(1)(D), 12 C.F.R. §226.15(a)(1)(ii), nor does the consumer have the right to rescind a residential mortgage transaction. An open-end credit plan is defined in 15 U.S.C. §1602(i) as one in which the creditor expects repeated

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Elton A. Burky, Esq.

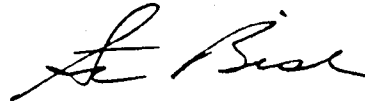
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transactions, which prescribes the terms of such transactions, and provides for a finance charge. A residential mortgage transaction is defined in 15 U.S.C. §1602(w) as a credit transaction in which a security interest is created against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

In your letter you state that when the FCU and consumer initially enter into the credit transaction, the consumer is informed that he has a right to rescind. You were concerned that the FCU should also be providing the consumer with supplemental notices of rescission when money is advanced to him under an open-end credit plan. If the open-end credit plans of the FCU fall within the provisions of the Truth in Lending Act and Regulation Z as cited above, supplemental notices would not be required as the right to rescind would only exist when the parties initially entered into the open-end credit plan. The consumer would not have a right to rescind when advances were made to him under the plan. If a residential mortgage transaction is involved, no right to rescind would exist.

We hope that this has been of assistance to you.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

JT:sg