 Office of Credit Unions Policies and Procedures	POLICY NUMBER
	10303
LENDING	EFFECTIVE DATE
	11/01/2018
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I. PURPOSE

Examiners review loan contracts to make sure they are valid, complete, enforceable, and comply with consumer regulations and credit union loan policies. This includes:

1. Consumer and Real Estate Loan Agreements
2. Member Business Loan Agreements and Covenants
3. Contracts with third parties to perform lending services

II. PRIMARY REFERENCE/REGULATIONS


1. [Regulation Z, Truth-in Lending Act](#)
2. [Credit Card Accountability and Disclosure Act \(CARD Act\)](#)
3. [NCUA Rules and Regulations, Part 723](#)
4. [Federal Trade Commission Credit Practices Rule](#)

III. MINIMUM PROCEDURES

1. Consumer/Real Estate Loan Contracts

Review consumer and real estate loan contract(s) for the following:

- a. If a non-industry standard contract is being used, ascertain whether an attorney has reviewed the loan contract(s) to determine its completeness, legal enforceability, and compliance with consumer regulations.
- b. Ensure the loan contract has disclosures in conformance with [Regulation Z](#).
- c. Review the loan contract's prepayment provision to ensure the credit union is administering the loans consistent to contract terms (regarding prepayment penalties and/or the permissibility of "paid ahead" status).
- d. Review the loan contract to determine what constitutes default by borrowers and ensure penalties are administered in accordance with contract terms.
- e. If the loan contract is signed by a co-signer, ensure the co-signer is provided the appropriate Notice to Co-signer as required by the [Federal Trade Commission's Credit Practices Rule](#).

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2. Member Business Loan Contracts

Review business loan agreement(s) and any restrictive covenants for the following:

- a. Ascertain whether an attorney has reviewed the loan contract(s) being used to determine its completeness, legal enforceability, and compliance with applicable regulations.
- b. Ensure the contract includes appropriate covenants for the type of loan being granted (business and personal guarantees of borrowers, requirement of borrower to provide ongoing financial information, assignment of rents, debt service coverage limitations, etc.).

3. Contracts to perform Lending Services

Review contracts with third party vendors that perform lending functions for the credit union to ensure the following, as applicable:

- a. Attorney review before the credit union signs the contract.
- b. Adequate description of scope of services and activities authorized.
- c. Responsibilities of all parties including subcontractor oversight.
- d. Service level agreements addressing performance standards and measures.
- e. Performance reports and frequency of reporting.
- f. Penalties for lack of performance.
- g. Ownership, control, maintenance and access to financial and operating records.
- h. Ownership of servicing rights.
- i. Audit rights and requirements, including responsibility for payment.
- j. Data security and member confidentiality.
- k. Business resumption and contingency planning.
- l. Evidence of current insurance coverage.
- m. Member complaints and member services.
- n. Compliance with regulatory requirements ([Gramm-Leach-Bliley Act](#), [Privacy](#), [Bank Secrecy Act](#), etc.)
- o. Dispute resolution.
- p. Default and termination clauses.
- q. Compliance with state and federal laws and regulations.
- r. Specify which party will provide consumer-related disclosures.