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May 13, 1977

Administrative Interpretation No. 3.104-7706

A CONSTRUCTION LOAN TO AN INDIVIDUAL TO BUILD
HIS OWN HOME IF SECURED BY A FIRST LIEN ON LAND
IS NOT A "CONSUMER LOAN"

You have asked whether a construction loan to an individual to build his own home is a "consumer loan" under the Consumer Protection Code and therefore subject to the Code's rates for supervised loans if a supervised lender were making such a loan. Your question involved situations in which either the land is already owned by the individual or the first lien purchase money mortgage on the land has already been executed and recorded.

"Consumer loan" is defined in Section 3.104. Subsection (2) is an exception to what otherwise would be a consumer loan:

"Consumer loan" does not include a loan primarily secured by a first lien which is a purchase money security interest in land.

Section 1.102(1) provides that the Consumer Protection Code shall be liberally construed and applied to promote its underlying purposes and policies. One of the underlying purposes and policies is to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act [15 U.S.C. §1601 et seq.]. Section 1.102(2)(f). In addition, the Administrator is directed to keep his rules in harmony with the Consumer Credit Protection Act and Federal Reserve Board regulations implementing that Act [§6.104(3)] as well as to enforce the Federal Truth in Lending Act to the fullest extent provided by law [§6.104(2)].

Reading all of these sections of the Consumer Protection Code together, the General Assembly apparently intended to exclude from the definition of consumer loan a transaction similar to that described in the Federal Truth in Lending Act (Title 1 of the Consumer Credit Protection Act) in Section 129(a)(4) as "a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling."

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Federal Reserve Board Regulation Z [12 C.F.R. §226], the implementing regulation of the Truth in Lending Act, uses the same description for that type of loan with the addition of one phrase as follows: "a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling." Section 226.8(d) (3) (Emphasis added). Regulation Z Section 226.8(f) further defines that type of loan:

In any case where a first lien or equivalent security interest in real property is retained or acquired by a creditor in connection with the financing of the initial construction of a dwelling, or in connection with a loan to satisfy that construction loan and provide permanent financing of that dwelling, whether or not the customer previously owned the land on which that dwelling is to be constructed, such security interest shall be considered a first lien against that dwelling to finance the purchase of that dwelling. (Emphasis added)

It is reasonable to conclude that the General Assembly intended to exclude from the definition of consumer loan not only a loan to purchase an existing dwelling but also a construction loan to build that dwelling whether or not the individual already owns the land on which the dwelling is to be constructed. There is no apparent reason to treat the two transactions differently. From the point of view of the individual who is acquiring a dwelling either by obtaining a loan to buy one already existing or by obtaining a loan to construct one, either transaction allows him to acquire rights in or the use of land. See Consumer Protection Code Section 1.301(21)(b) defining "purchase money security interest in land" in relation to a loan. Because there is not an expressed legislative intent to treat the two transactions differently, and because the Truth in Lending Act and Regulation Z treat them the same, it is the opinion of this Department that a construction loan to an individual to build his own home, if the loan is primarily secured by a first lien on land, is not a consumer loan as defined in Section 3.104 and therefore is not subject to the Consumer Protection Code's provisions on maximum charges.

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