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eNews Headline: Are Home Equity Loans to an Executive Officers Limited Under Regulation O?

Question: Are home equity loans made to an 'executive officer' included in the limit under §215.5 – the $100,000 cap?

Answer: That depends – and is complicated! If its first lien loan AND the use of the proceeds are restricted to the 'purchase, construction, maintenance, or improvements' of a residence of the executive officer, the loan would not be subject to the limitations of §215.5(c)(4).

Below is from an FDIC Advisory Opinion.

...snip

Reg O provides that a bank is authorized to extend credit to an executive officer in any amount to finance the education of the officer's children or to finance the purchase, construction, maintenance or improvement of a residence of the officer if the residence is secured by a first lien and is owned by the executive officer. 12 C.F.R. § 215.5(c)(1) and (2). If credit is extended to an executive officer for any "other purpose," the aggregate amount of credit must not exceed $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, whichever is higher, with the proviso that the amount of credit in any event may not exceed $100,000. 12 C.F.R. § 215.5(c)(3). (For purposes of compliance with the "other purpose" loan limit, non-member banks look to section 337.3(c) of the FDIC's regulations. 12 C.F.R. § 337.3(c)).

With regard to your first question, the extension of credit would be authorized under Reg O for any amount pursuant to 12 C.F.R. § 215.5(c)(2) if the second home is the only residence of the executive officer which the bank has financed and secured by a first lien. If the executive officer has already financed a first home through the bank, the loan for the second home would be subject to the "other purpose" limits of 12 C.F.R. § 337.3(c).

As far as the second question is concerned, a home equity loan secured by a first lien could be made in any amount pursuant to 12 C.F.R. § 215.5(c)(2) as long as a prior loan on the residence has not been made by the bank and the home equity loan is used for the purposes specified in that subsection, that is, the maintenance or improvement of the officer's residence. If the home equity loan is used for any other purpose, it is then subject to the limits imposed by 12 C.F.R. § 337.3(c).

Source link.

Some states limit restriction on proceeds for home equity loans secured by a borrowers ‘homestead’ so be sure to check your state laws.

For the Compliance Adviser *Legal Ease* archive, click here.

Compliance Tip: Under Regulation O's tangible economic benefit rule, “[a]n extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.” 12 C.F.R. § 215.3(f).

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