

SUBJECT: Scope of Lending Laws

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INTRODUCTION

This release applies to all credit unions. It summarizes the scopes of the major Wisconsin consumer credit laws, Federal Truth in Lending (Regulation Z) and the Military Lending Act rules.

EXECUTIVE SUMMARY

This release is intended to be a reference to help you determine whether loans are subject to the provisions of the Wisconsin Consumer Act (WCA), Chapter 138, Chapter 428, Truth in Lending or the Military Lending Act regulations. Of course, this is important in determining what loan forms to use and whether particular provisions of the law apply (e.g. consumer approval transactions, escrow payment option notices, interlocking loans, etc.).

Use The League's consumer loan forms for WCA loans. Chapter 138 and 428 loans are written on The League's non-consumer real estate loan forms. Use MLA versions of forms for loans subject to the Military Lending Act regulations.

It is important to remember that more than one law usually applies. The obvious example is that Truth in Lending overlaps with any WCA or Chapter 428 loan, and many Chapter 138 loans. But if the borrower is a servicemember on Active Duty (or the dependent of such a borrower) the Military Lending Act regulations may also apply.

However, the state laws may overlap as well. The exceptions occur when the first lien real estate mortgage is not the borrower's principal residence, or when the property is not a one- to four-family dwelling.

It is not necessary to memorize the detailed intricacies of each statute. Just know the basics and refer to the release or statutes directly when necessary. Flow charts are also provided to help determine whether a particular loan is subject to the WCA, Reg. Z or the Military Lending Act regulations. We encourage providing copies of the charts to every loan officer.

WISCONSIN CONSUMER ACT

The WCA (Wis. Stats. Chapters 421-427) generally applies to any loan, lease, or credit sale (including refinancings, consolidations, deferrals and other modifications) made in Wisconsin for a personal, family, or household purpose unless any of the following three exceptions apply:

1. The amount financed on closed-end credit exceeds \$25,000 (increased to \$50,000 as of Jan. 1, 2027). (For leases, this refers to the "total lease obligation.") For open-end credit, this threshold does not apply to any meaningful extent. Regulators believe that any open-end consumer-purpose loan is subject to the WCA, unless exception #2 or #3 applies.
2. All borrowers are organizations.

3. The loan is secured by a first mortgage (or equivalent security interest¹).

Exhibits A and B of this release provide flow charts illustrating the scope of the Wisconsin Consumer Act:

- Exhibit A - Closed-End Flow Chart for Determining Wisconsin Consumer Act (WCA) Coverage
- Exhibit B - Open-End Flow Chart for Determining Wisconsin Consumer Act (WCA) Coverage:

It is important to use loan documents drafted to comply with the Wisconsin Consumer Act when applicable.

The following *ii Releases* address compliance issues under the WCA:

0066 – Payroll Deduction Forms	B031 – Right to Cure Default
0110 – Consumer Approval Transactions	B035 – Single Payment Loans
0121 – Debt Collection	B037 – Simple Interest Deferral Agreements
0128 – Credit Union Self-Assessment Guide to Compliance Under Wisconsin Law	B046 – Consumer Kwik-Cash Loans
B002 – Variable Rate Adjustment Notices	B049 – Interlocking Loans
B005 – Wisconsin’s Marital Property Act	B051 – Off-Site Sales
B007 – Credit Practices Rule	B053 – Real Estate Mortgage Lending
B010 – Open-End Credit Application Disclosure	B054 – Agricultural Lending
B013 – Credit Union Setoff Checklist	B055 – Wisconsin Consumer Act Registration
B024 – Tax Refund Anticipation Loans	B062 – High-Cost Mortgage Loans Under HOEPA
B025 – Voluntary Surrender of Collateral; Right to Redeem	B063 – FTC Rule on Preservation of Consumers’ Claims and Defenses
B030 – Adjustable Rate Mortgage Lending Programs	B064 – R.E.A.P.® & Home Equity Lines of Credit
	B066 – Self-Help Repossession of Motor Vehicles

WIS. STATS. CHAPTER 138

Section 138.052 of the state statutes applies to any loan secured by a first lien real estate mortgage (or equivalent security interest²) on a one- to four-family dwelling resided in by the borrower, including a mobile home permanently attached to real estate, used as the borrower’s principal dwelling unless:

- The loan is to a corporation or limited liability company;
- The loan is primarily for a business or agricultural purpose;
- The loan was made prior to November 1, 1981 and has not been refinanced, renewed, extended, or modified since then; or
- The loan is insured or guaranteed by HUD, the V.A., or the Farmers Home Administration.

See *ii Release No. B047* for details of the requirements of § 138.052.

Section 138.056 (the variable rate provision) generally applies to the same loans, but also to all first lien variable rate mobile home loans, rather than just those considered to be real estate and secured by mortgages. It does not apply to reverse mortgages. Other provisions in Chapter 138 apply to older loans.

See *ii Release No. B030* for information about adjustable rate mortgages, including § 138.056 requirements. See *ii Release No. B053* for general real estate lending requirements.

CHAPTER 428

Chapter 428 of the state statutes applies to personal, family, household, or agricultural purpose loans secured by a first lien real estate mortgage (or equivalent security interest²) unless:

- The amount financed exceeds \$25,000,
- The loan is made to an organization, or

1 An equivalent security interest includes a second mortgage when the credit union holds the first, or a land contract.

2 An equivalent security interest includes a second mortgage when the credit union holds the first, or a land contract.

- The loan is a refinancing, modification, extension, renewal, or assumption of a loan that had an original principal balance in excess of \$25,000 which was (and still is) subject to § 138.052.

Although equivalent security interests are generally subject to § 138.056, they are now exempt from the rate change notice requirements of § 138.056(4).

The basic requirements of Chapter 428 are described in *ii Release No. B047*. See *ii Release No. B053* for general real estate lending requirement

TRUTH IN LENDING

Truth in Lending (Reg. Z) generally applies to credit extended by a creditor primarily for personal, family, or household (not business or agricultural) purposes unless:

- The loan is to an organization (corporation, partnership, association, union, etc.); or
- The loan is over \$73,400, effective Jan. 1, 2026 (up from \$71,900 in 2025). Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount.

Notwithstanding the above, all credit cards are subject to Reg. Z's rules governing the issuance of credit cards and liability for their unauthorized use.

Reg. Z generally applies to “creditors,” a term that the rules define. A person or entity that made 25 or fewer consumer loans (or five or fewer dwelling-secured loans) in the prior calendar year is not considered a “creditor” under the regulation. (Reg. Z §1026.2(a)(17).)

See Exhibit C of this release for a flow chart illustrating coverage of the regulation.

Loans to organizations and to trusts

Reg. Z does not apply when the borrower is not a “natural person.” For example, loans to corporations, partnerships, associations, churches, unions, and fraternal organizations are exempt. The exemption applies regardless of the purpose of the loan and regardless whether an actual person may guarantee or provide security for the credit.

However, if the loan is for a consumer purpose, it is clear that as of Aug. 1, 2015, Reg. Z does apply even if the borrower is a trust created for tax or estate planning purposes – such as the revocable living trusts that credit union members often create. The CFPB's Comment 3(a)-10 to Reg. Z explains:

Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.

Other *ii Releases* address various Reg. Z issues, including:

B002 - Variable Rate Adjustment Notices	B053 - Real Estate Mortgage Lending
B004 - Fair Credit & Charge Card Disclosure Act	B062 - High-Cost Mortgage Loans Under HOEPA
B014 - Real Estate Settlement Procedures Act (RESPA)	B064 - R.E.A.P. [®] & Home Equity Lines of Credit
B019 - Compliance Checklist for Mobile Home Lending	B067 - Lending to Servicemembers
B020 - Basics of Construction Lending	B068 - Reg. Z – Higher-Priced Mortgage Loans
B024 - Tax Refund Anticipation Loans	B069 - Private Education Loans
B029 - Closing Loans by Mail and Delayed Disclosures	B071 - Reg. Z: Loan Originator Rule
B030 - Adjustable Rate Mortgage Lending Programs	B073 - Skip-a-Payment Promotions
B035 - Single Payment Loans	B074 - Reg. Z: Ability-to-Repay / Qualified Mortgage Rules
B036 - Reg. Z – Right of Rescission	B075 - Reg. X & Reg. Z: Mortgage Servicing Rules
B042 - Reg. Z—Closed-End Credit Disclosures	B076 - Reg. Z: Financing Credit Insurance
B046 - Consumer Kwik-Cash Loans	

B079 - TILA-RESPA Integrated Disclosure Rule

MILITARY LENDING ACT

As of Oct. 3, 2016, Department of Defense regulations under the federal Military Lending Act (MLA) apply to almost any consumer lending by a credit union, closed-end or open-end to a member of the armed forces who is on *Active Duty* or *Active Guard and Reserve Duty*, or their dependent. However, they make exceptions for dwelling-secured loans, purchase-money loans for vehicles or personal property, or credit that is outside the scope of Reg. Z. (Before that date, the rules only applied to three types of loans – payday loans, vehicle title loans, and tax refund anticipation loans.)

The MLA regulation does not apply to:

- A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;
- Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;
- Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;
- Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and
- Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in the MLA regulation.

Under the MLA rules, credit unions may not charge more than 36% Military Annual Percentage Rate (MAPR) on loans to a consumer who, at the time he/she is obligated on a credit transaction, is either a member of the military on active duty or a dependent of such a person. The MAPR includes various charges and fees that might not be included in ordinary APR calculations. Special disclosures must be provided, in writing and orally, when the MLA applies. The rules may restrict a credit union's ability to take security interests in accounts and set off if a loan defaults. The League offers MLA versions of several WCUL loan forms, which are designed for use when a loan is subject to the MLA rules:

- WCUL #82005-MLA *MLA Chattel Security Agreement (Rev. 6/16)*. Subscribers to the standard version *Chattel Security Agreement* (#82005) receive the MLA version with their purchase.
- WCUL #82014-MLA *MLA Consumer Note and Federal TIL Disclosures (Rev. 6/16)*. Subscribers to the standard version *Consumer Note and Federal TIL Disclosures* (WCUL #82014) receive the MLA version with their purchase.
- WCUL #82031-MLA *MLA Non-Consumer Note (Rev. 6/16)*. Subscribers to the standard version *Non-Consumer Note* (#82031) receive the MLA version with their purchase.
- WCUL #82033-MLA *MLA Consumer Kwik-Cash Loan Agreement (Rev. 6/16)*. Subscribers to the standard version *Consumer Kwik-Cash Loan Agreement* (#82033 or 82033-DC) receive the MLA version with their purchase.
- WCUL #82057-MLA *MLA Federal TIL Disclosures (Personal) (Rev. 6/16)*. Subscribers to the standard version *Federal TIL Disclosures (Personal)* (#82057) receive the MLA version with their purchase.
- WCUL #82073-MLA *MLA Consumer Note (Rev. 6/16)*. Subscribers to the standard version *Consumer Note* (#82073) receive the MLA version with their purchase.

For details, see The League's *ii Release No. B067*.

See Exhibit D of this release for a flow chart illustrating coverage of this regulation.

SERVICEMEMBERS CIVIL RELIEF ACT

The federal Servicemembers' Civil Relief Act (SCRA) and a parallel Wisconsin Act set a 6% limit on the interest that can be charged on any loans that were taken out before a consumer's entry into active military service. This interest rate cap applies during the time of active duty. The SCRA also provides protections for military personnel involved in court actions. For details, see The League's *ii Release No. 0072*.

EXHIBITS

- A. Closed-End Flow Chart for Determining Wisconsin Consumer Act (WCA) Coverage
- B. Open-End Flow Chart for Determining Wisconsin Consumer Act (WCA) Coverage
- C. Flow Chart for Determining Regulation Z Coverage
- D. Flow Chart for Determining Military Lending Act Coverage

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local; or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

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EXHIBIT A - CLOSED-END FLOW CHART FOR DETERMINING WISCONSIN CONSUMER ACT (WCA) COVERAGE

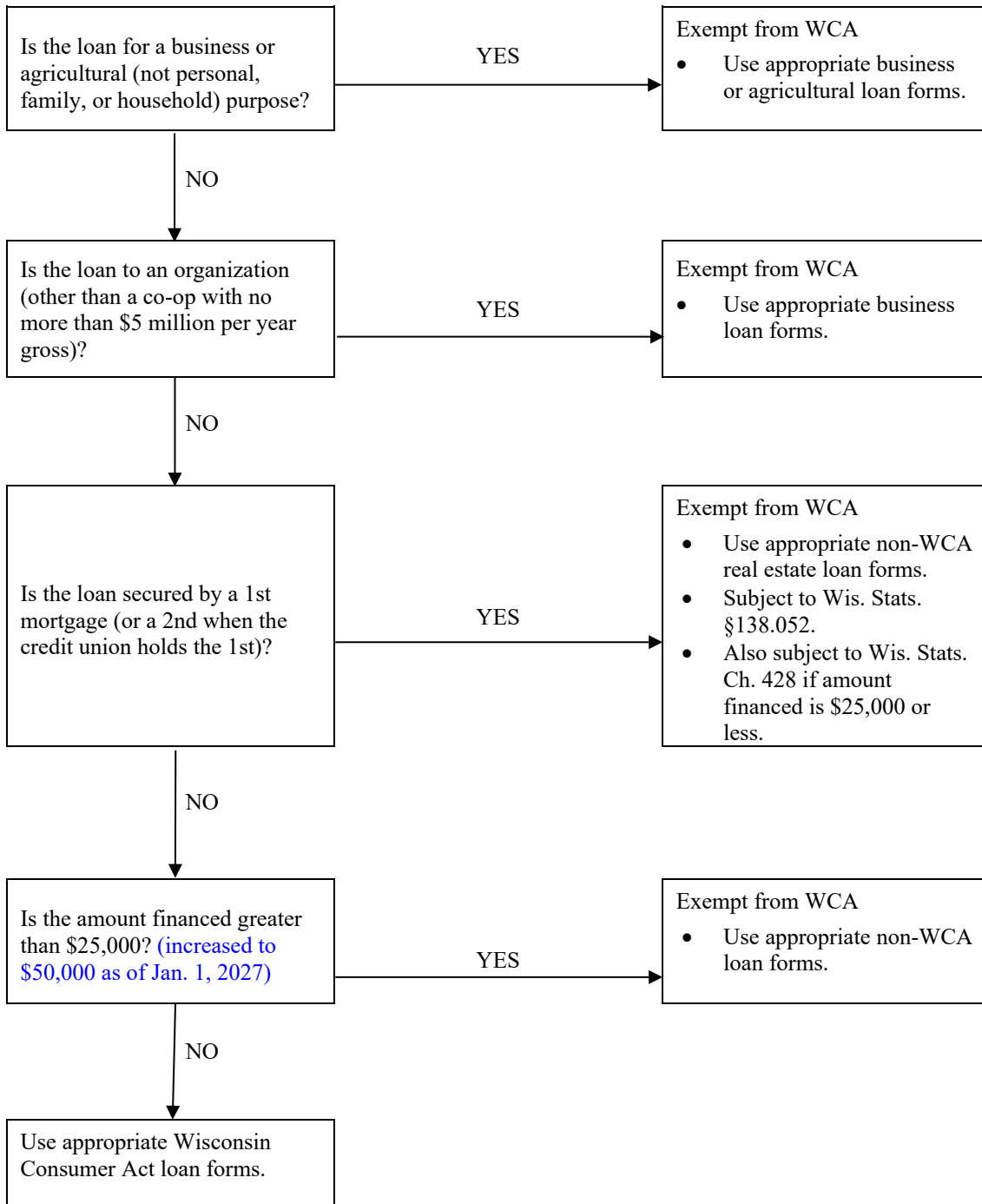


**EXHIBIT B - OPEN-END FLOW CHART FOR DETERMINING WISCONSIN
CONSUMER ACT (WCA) COVERAGE**

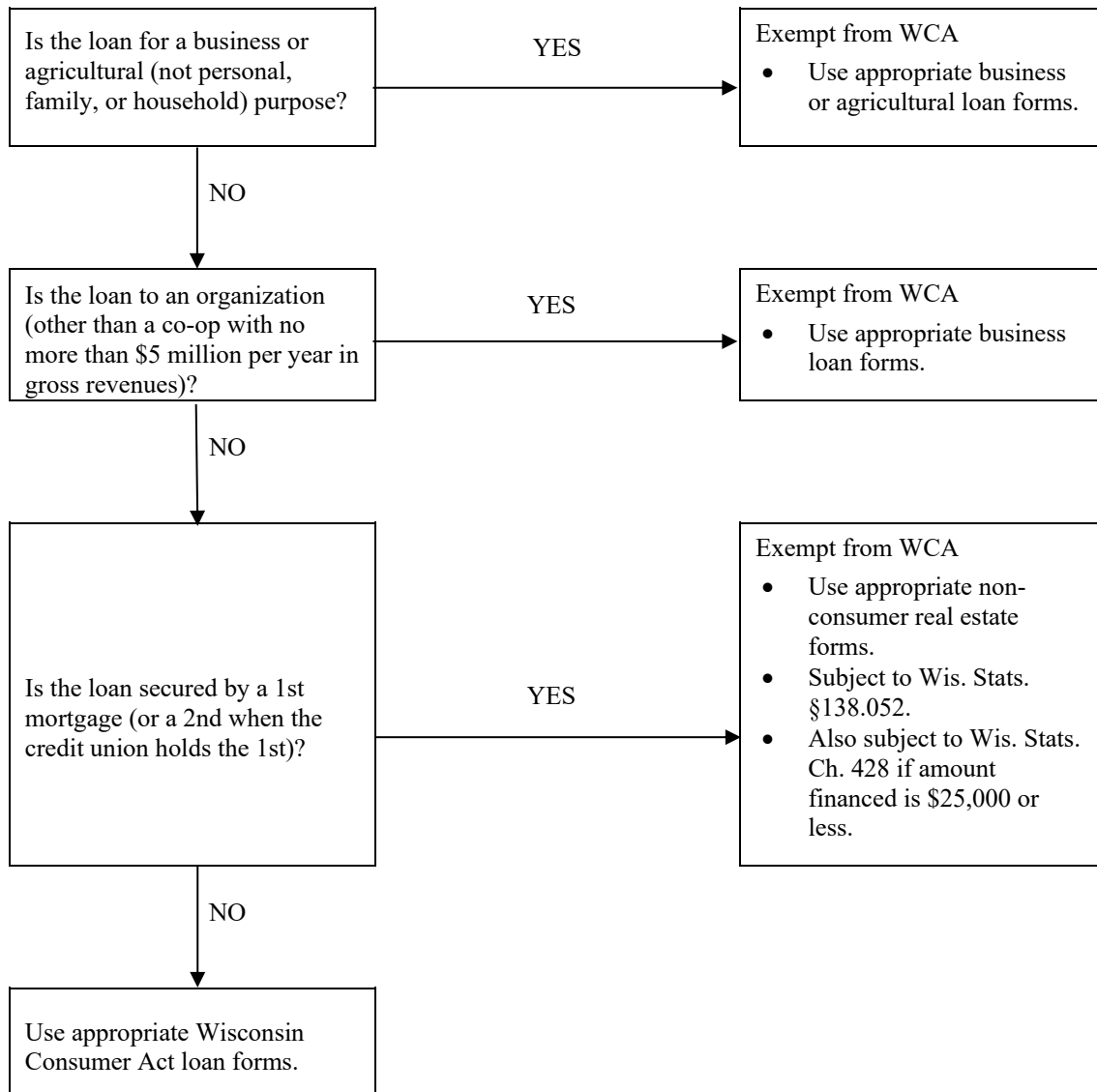
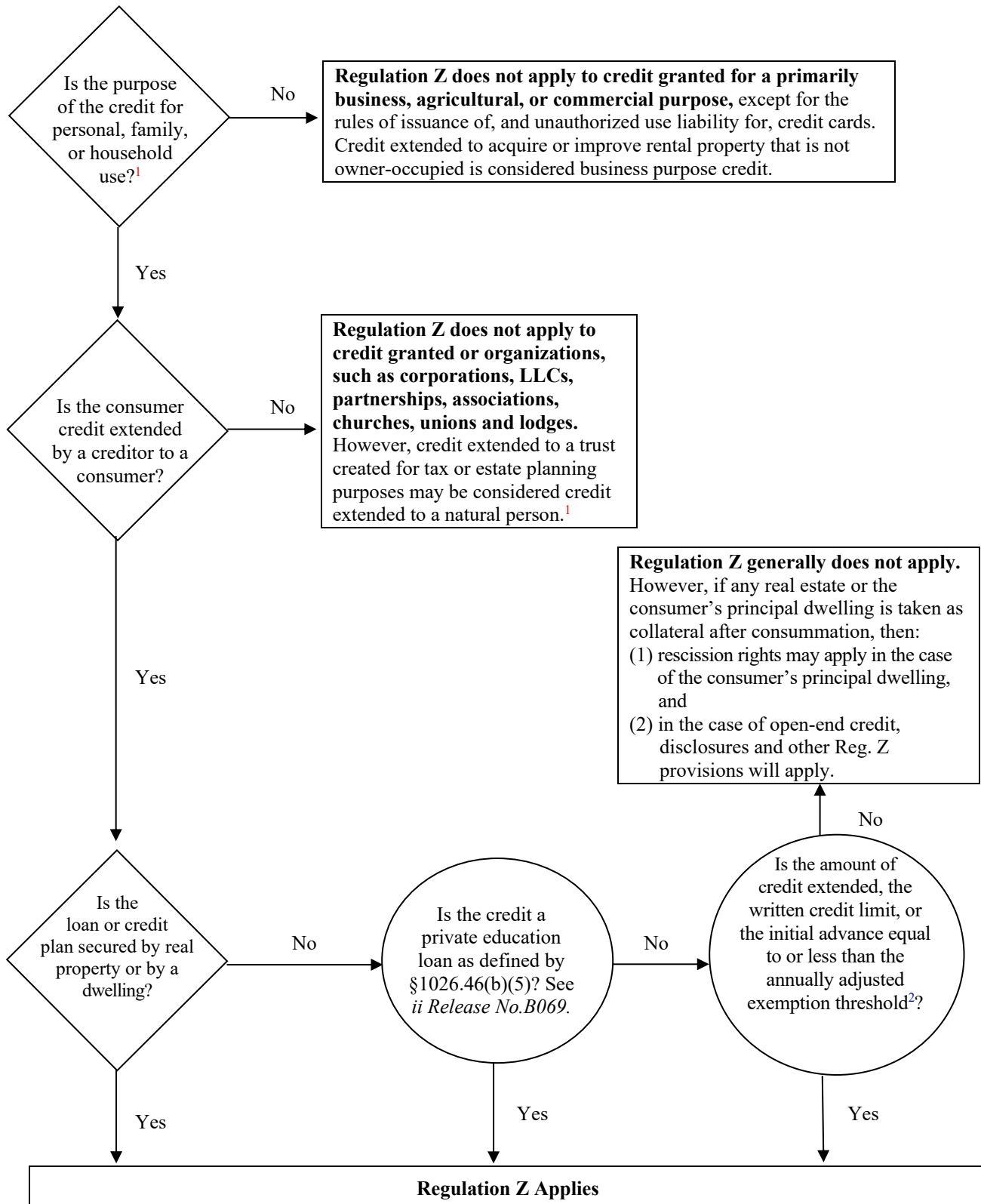


EXHIBIT C - FLOW CHART FOR DETERMINING REGULATION Z COVERAGE



¹For guidance on this issue, see the *Regulation Z Commentary* to Section 1026.3(a). The Commentary gives important guidance specific to credit cards, factors to consider in determining if credit is primarily business purpose (with examples relating to, non-owner occupied rental property, owner-occupied rental property, refinancings, credit card renewal, agricultural purpose, organizational credit, and loans to trusts.)

²The exemption threshold is \$73,400, effective Jan. 1, 2026 (up from \$71,900 in 2025).

EXHIBIT D - FLOW CHART FOR DETERMINING MILITARY LENDING ACT COVERAGE

