

# RISK Alert

Actionable insights for bond policyholders

Awareness

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Warning

## Credit unions targeted in class action lawsuits related to solar lending

Multiple claims have been received from credit unions related to solar energy sales and installation. In some cases, credit unions have been named as additional defendants in class action litigation by plaintiffs who allege they are victims of door-to-door solar lending solicitations. The risk is increased in examples where the solar provider is out of business or has filed for bankruptcy protection leaving the credit union as the only responsible party as the holder of the loan.

### Alert details

The plaintiffs in this action all signed separate contracts with solar power companies for the installation of solar panel systems and credit contracts with the credit union defendants that financed the consumer's purchase of the solar panel system. A single salesperson arranged both contracts, which were usually negotiated and executed in the consumer's home. All the credit contracts require that any holder of the credit contract be liable for all claims and defenses the consumer has against the solar company, such that any claim the consumer has against the solar equipment provider is also a claim that can be raised against the credit union or holder-in-due course of the financing contract. The claims further allege:

- Solar equipment company utilized deceptive and predatory sales tactics to pressure consumers to purchase solar panels for their homes.
- Solar equipment company breached express warranties contained in the purchase agreement, the implied warranty of merchantability, and the implied warranty of fitness for purpose.
- Truth in Lending Disclosures inaccurately disclosed the APR, the Finance Charge, the Amount Financed, and the Total of Payments and in some cases do not identify the name and address of the creditor.
- Sales agreements violate state Solicitation Sales Acts by not providing the required right to cancel the transaction.
- Credit unions are currently the holders of borrower loans and borrowers seek as relief, a termination of the loan agreements, cancellation of remaining interest and principal payments, and remittance to borrowers of any and all payments made, Statutory and punitive damages, and additionally, reasonable attorney's fees associated with pursuing such relief.

Attorneys' General in several states are warning consumers about misleading ads from rooftop solar marketers. Homeowners have reported inaccurate cost/benefit calculations, poorly designed or installed products, an inability to reach the vendor after installation, and false claims of partnership with state power providers and electric membership cooperatives.



**Date:**

July 6, 2023

**Risk category:**

Lending; compliance; litigation; consumer payments

**States:**

All

**Share with:**

- Compliance
- Executive management
- Legal
- Loan manager
- Risk manager



**Facing risk challenges?:**

[Schedule](#) a no-cost, personalized discussion with a Risk Consultant to learn more about managing risk.

# Risk mitigation

For credit unions currently participating in Solar Lending programs, or for credit unions contemplating this type of lending, we recommend the following:

**Dealer and/or vendor agreements:** A written, attorney approved, signed vendor agreement should be obtained from each vendor participating in your solar lending program. The agreement should specify the conditions under which the solar lending program will operate. Vendor fees, compensation, responsibilities, misrepresentation, fraud, and forgery should be clearly spelled out in the vendor agreement. Evidence of securing the collateral showing the credit union as lien holder should also be included in the agreement. Documentation standards expected by the vendor should be included as well as funding/disbursement procedures and dispute resolution and exit clauses. Consider requiring Indemnification and Hold Harmless Clause in favor of the credit union in the event a vendor's representative causes an issue for your member. To avoid reputational risk, we also recommend you include a "right to audit" clause, allowing you to verify contractual requirements are being met.

**Dealer and/or vendor due diligence:** We recommend performing a thorough assessment on each potential vendor relationship before entering into agreement. At a minimum, the assessment should include reviewing the following:

- Complaints filed against the vendor (Consumer Affairs or Better Business Bureau)
- Confirm licensure status at least annually
- Past and current lawsuits
- Service or responsiveness of subcontractor(s) used by the third party
- Performance according to terms of the contract
- Current business insurance
- Financial statements
- Investigate and approve after-market products offered by the vendor (if applicable)
- We recommend you investigate the practices of the vendor's sales practice- to ensure borrowers are not promised benefits that are not available or possible.
- Establish a risk management process to control the risk associated with the vendor relationship

Additionally, the due diligence process does not end at the time the credit union selects the third-party vendor. Rather, due diligence is an ongoing process where credit unions must compare program results with expectations and ensure all parties to the arrangement are fulfilling their responsibilities.

**Legal review of written agreements/contracts:** We recommend all vendor agreements or contracts be reviewed by legal counsel hired directly by the credit union when the contract is initially signed and when changes are made.

**Loan administration:** We recommend you clearly define a board approved strategy to implement a solar lending program to include the at least the following elements.

- Establish limits or concentrations for the solar lending program as a maximum percentage of the total loan portfolio
- Include board established guidelines for portfolio limitations in terms of net worth, and in aggregation with other lending products
- Include an exit strategy in the event of an unexpected or unplanned increase in the program risk profile
- Address vendor fee structure
- Address agreement terms regarding how purchase situations involving fraud, forgery, and identity theft will be handled with the vendor
- Define the terms and rates of the loans
- Define the types of acceptable collateral
- Define the loan-to-value ratios
- Establish a maximum dollar amount for loans to be included in the solar lending program
- Specify approval authority and limits
- Specify how policy exceptions will be approved and how and when exceptions will be reported to the board
- Specify the type of credit scoring and/or analysis to be used in the approval process (clarify if auto enhanced scoring is acceptable)
- Specify the use of a funding checklist to ensure all documents is present and approved prior to disbursement
- Establish membership qualifications for new borrowers
- Establish post disbursement loan quality control review procedures to be completed within 30 days of funding

**For additional support, call 800.637.2676 or email [riskconsultant@trustage.com](mailto:riskconsultant@trustage.com)**

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