

November 16, 2010

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Withdrawal Request for the Proposed Truth-in-Lending Mortgage Regulations
(FRB Docket No. R-1390)

Dear Board of Governors:

This letter is from individual attorneys who regularly represent low or moderate income homeowners in defense of foreclosures, as well as national, state and local advocacy organizations, some of whom are a part of the Americans for Financial Reform coalition, others who are legal aid or community housing programs. We write this letter to make the unprecedented request that you **withdraw** the proposed Truth in Lending (“TILA”) mortgage regulations in FRB Docket No. R-1390.¹ In the face of an unparalleled foreclosure crisis, now is the time to reinforce the fundamental importance of TILA rescission. Instead, **the Board’s proposal would eviscerate the single most effective tool that homeowners have to stop foreclosures and avoid predatory loans: the extended right of rescission.**

The FRB Docket R-1390 contains a series of proposed changes to the TILA rules governing mortgage lending. A few of the proposed changes, including new “material disclosures” for home secured credit, would advance consumer protections. Some changes are neither particularly damaging nor particularly beneficial to consumers. Other parts of the proposal, however, would seriously undermine the reliability of TILA disclosures on home secured credit. Instead of informing consumers about the terms of their loans as Congress intended, these proposals would allow broad misstatements of loan terms through new tolerances that are without statutory authority.

A much greater concern is the proposed decimation of TILA’s right of rescission. At the depths of the worst foreclosure crisis since the Great Depression, we are surprised that the Federal Reserve Board has proposed rules that would eviscerate the primary protection homeowners currently have to escape abusive loans and avoid foreclosure: the extended right of rescission in 12 CFR § 226.15 and 226.23.

The Truth in Lending Act passed by Congress specifically provides consumers the right to unwind an illegal loan through “rescission” for up to three years after the loan was consummated. The statute – and current Board regulations – both provide that if the proper disclosures were not provided to the homeowner at the closing, the homeowner can rescind the loan by sending a notice to the creditor. The statute then requires the creditor to cancel the security interest. Only *after* the creditor has complied with its obligation to cancel the security interest is the homeowner required to pay back the lender the amount still due on the loan. This order of obligations is the essence of the protection provided by TILA’s extended right of rescission. The cancelling of the security interest means that the homeowner has a defense to a foreclosure. It also means that the homeowner has the means to obtain refinancing so as to be able to tender the amount due. The extended right of rescission does *not* mean that the homeowner does not have to repay the loan. While the amount due is reduced by the finance charges, fees and amounts the homeowner has already paid, the balance is still due the creditor.

¹ See <http://www.federalreserve.gov/newsevents/press/bcreg/20100816c.htm>.

Despite the clear order of these events set out in the Act passed by Congress, the Board's proposed regulations would make the extended right of rescission useless by requiring that the homeowner must *pay the entire amount demanded by the creditor* before the creditor is required to cancel the security interest in the home. This proposed changed order will undermine the primary purpose and power of TILA's extended right of rescission – the mandatory cancellation of the security interest by the creditor upon receipt of the homeowner's notice. It is the order of events which has meant that the extended right of rescission under TILA has been the primary home-saving legal tool against predatory loans and foreclosures for the past forty-two years. This proposal would make it completely useless to all but the wealthiest homeowners.

The extended right of rescission is a critical tool necessary to enforce the strict disclosure requirements in the Truth in Lending Act. It is far preferable to provide substantive limits to abusive products and features, but for the most part, regulation of our current mortgage market depends on disclosure of the real terms of the transaction to provide some balance between the parties to a mortgage transaction. If even these the disclosure requirements are undermined, most homeowners have no hope of navigating the mostly *caveat emptor* nature of today's mortgage market

In the great majority of cases brought to stop a foreclosure in the majority of states, TILA rescission claims are included. Passage of the proposed rule will considerably exacerbate foreclosure statistics in this nation – harming countless homeowners, communities and the economy.

Additionally, the tolerances and changes to the material disclosures proposed in this docket would also harm consumers.

For these reasons, we request that you withdraw the entire docket, and leave the update of TILA to the Consumer Financial Protection Bureau when it takes over this area in July, 2011.

Sincerely,

National Consumer and Civil Rights Organizations

Americans for Financial Reform
Campaign for America's Future
Center for Media and Democracy
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
The Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center on behalf of its low-income clients
National Fair Housing Alliance
National People's Action
Service Employees International Union
U.S. Public Interest Research Group

State and Local Legal Services Programs

Housing Economic Rights Advocates, Oakland, CA
Legal Aid Foundation of Los Angeles, CA
Connecticut Fair Housing Center
Jacksonville Area Legal Aid, Inc., FL

Legal Aid Society of Palm Beach County, FL
 Legal Services of Greater Miami, FL
 Atlanta Legal Aid Society, Inc., GA
 Legal Assistance Foundation of Metro Chicago, IL
 Consumer Advocacy Center, Chicago, IL
 Kentucky Equal Justice Center
 Public Justice Center of Maryland
 Michigan Advocacy Project
 UAW Legal Services, Detroit, MI
 Housing Preservation Project, St. Paul, MN
 Senior Citizens Law Office, Albuquerque, NM
 Legal Services of New Jersey
 Neighborhood Economic Development Advocacy Project, New York, NY
 Empire Justice Center, NY
 Elder Law Clinic, St. John's University School of Law, Queens, NY
 Financial Protection Law Center, NC
 Housing Research & Advocacy Center, Cleveland, OH
 Ohio Association for Justice
 Northeast Ohio Legal Services, Youngstown, OH
 Advocates for Basic Legal Equality, OH
 Summit County Office of Consumer Affairs, OH
 Community Legal Services, Inc., Philadelphia, PA.
 Senior Citizens Law Office, Philadelphia, PA
 Virginia Poverty Law Center, VA
 Legal Aid Justice Center, Charlottesville, VA
 Northwest Justice Project, Seattle, WA
 Columbia Legal Services (on behalf of clients), Washington
 Mountain State Justice, WV
 Consumer Justice Law Center, Big Bend, WI

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