



December 22, 2010

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
Docket No. R-1390,

Dear Ms. Johnson,

The Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the American Association of Residential Mortgage Regulators (AARMR), collectively “the state regulators,” appreciate the opportunity to comment on the Federal Reserve Board’s (FRB) Notice of Proposed Rulemaking (NPR or proposal) regarding Regulation Z. The state regulators applaud the FRB’s efforts in addressing some critical aspects of consumer protection. While we endorse a significant number of the proposed Reg Z revisions outlined in the NPR, we also believe a few of the issues revolving around the right of rescission and reverse mortgages addressed in the NPR warrant additional review and may be better addressed by the forthcoming Consumer Financial Protection Bureau (CFPB), which will assume responsibility of administering Reg Z.

*Right of Rescission*

The right of rescission is a fundamental tool consumers have to combat predatory lending, and it is important to update the details of the rescission process as needed. The state regulators support the FRB’s inclination to abandon the two-copy rule, which requires creditors to provide two copies of the notice of the right to rescind to each consumer entitled to rescind the transaction, since the requirement seems obsolete. Additionally, we support the revised list of material disclosures which, if not provided, trigger a consumer’s extended right to rescind. Similarly, we support the FRB’s proposed tolerances for the accuracy of certain disclosures. These tolerances will work to ensure inconsequential disclosure errors do not result in extended rescission rights.

While we applaud the FRB’s efforts in simplifying the “Notice of Rescission” and believe the proposed notice represents a general improvement over current disclosures, we also believe a few aspects of the proposed disclosure could lead to consumer confusion. Above all, the disclosure says a consumer “must submit the bottom (tear-off) portion” of the disclosure in order to cancel the transaction. Consumers should be able to submit an intent to cancel in writing and should not have to use the tear-off portion of the disclosure, especially in instances of the extended right to rescind, and the disclosure should reflect this. Finally, the disclosure maintains the consumer may have an extended right to rescind “in certain circumstances.” The FRB should

require creditors to notify consumers what those circumstances are. The state regulators note the FRB's consumer testing in this area and inclination not to include the various circumstances on the disclosure. The FRB should at least require that the disclosures tell consumers to contact the FRB or a lawyer or provide some other direction about how consumers can determine those circumstances.

With regard to the proposed revisions related to parties' obligations during the rescission process, we suggest the FRB re-evaluate these matters before developing corresponding rules. These are extremely important and highly contentious matters. The timing and order of events governing a consumer's tendering of the principal loan balance and the creditor's release of the security interest is a complex issue. Given the current foreclosure crisis, the importance of the rescission defense to borrowers and the fact that many consumer groups and others have strongly opposed these revisions and urged the withdrawal of the rule, it may be prudent to delay rules in this area and allow the CFPB to develop such rules when the new agency assumes responsibility of administering Reg Z.

The state regulators do not agree with the FRB's proposed characterization of a *bona fide* personal financial emergency. The FRB claims a *bona fide* personal financial emergency, which enables a consumer to waive the right to rescind, should usually involve imminent property damage or threats to health or safety. There are a significant number of occurrences which fall outside these designations that should be considered a financial emergency. As an example, for a person who depends on his or her car for transportation to work, a personal financial emergency might include an instance where his or her car breaks down and is inoperable. The FRB should consider a broader approach to how a lender should define "personal financial emergency."

The state regulators support the FRB's proposal to afford the right to rescind to a consumer who guarantees a loan that is subject to the right of rescission and who pledges his or her principal dwelling.

#### *Reverse Mortgages*

The state regulators acknowledge the CFPB will have a significant role in the reverse mortgage area. The Dodd-Frank Bill mandates a robust reverse mortgage study by the CFPB, which should help shape future reverse mortgage regulations. Nevertheless, the FRB has proposed some valuable provisions in this area through the NPR. Discussed below are our suggestions within the context of this proposal.

The state regulators support all of the proposed reverse mortgage disclosures and appreciate their clarity. On one specific note, the sentence "We may also make other changes to your loan" which appears on the open-end reverse mortgage early disclosure should include additional explanation and/or clarity.

The state regulators appreciate the FRB's efforts to protect consumers through its proposal to prohibit a creditor from originating a reverse mortgage before the consumer has obtained independent counseling from a counselor that meets the qualification standards established by HUD or substantially similar standards. We believe, however, as the FRB has pointed out, there may be issues with the supply of adequate counseling for such a requirement. We therefore suggest for this provision an extended implementation structure whereby the CFPB can, after

two years, evaluate the adequacy of quality counseling in the market and adjust the requirement accordingly.

The state regulators also support the FRB's amendments to Reg Z which revise the advertising rules for reverse mortgages. We believe these amendments will ensure consumers receive accurate and balanced information.

One of the primary areas of concern with reverse mortgages is the practice of conditioning a reverse mortgage on the purchase of another financial product. We strongly support the FRB's proposal to prohibit a creditor or broker from requiring a consumer to purchase another financial or insurance product as a condition for obtaining a reverse mortgage. The proposal provides a safe harbor for compliance if the creditor properly delivers to the consumer the "Key Questions to Ask about Reverse Mortgage Loans" document and the reverse mortgage transaction is consummated (or the account is opened) at least ten calendar days before the consumer purchases another financial or insurance product. While we support a cooling off period as an operational barrier between the consumer and the creditor, whereby the consumer can digest applicable information and risks, we believe ten days is too short. We recommend the FRB implement an interim cooling off period while additional research and analysis is conducted. The reverse mortgage study mandated by Dodd-Frank should focus on this area and explore a proper time period for a safe harbor. We believe the "Key Questions" document, which explicitly highlights the dangers of obtaining a separate financial product in connection with a reverse mortgage, combined with a cooling off period are proper steps in assuring consumer protection.

#### *Loan Modifications that Require New TILA Disclosures*

The state regulators applaud the FRB's efforts in updating the TILA disclosure requirements associated with loan modifications in order to encourage consistent application of Reg Z and eliminate loopholes. However, we acknowledge this aspect of the proposal may be too broad and, as the FRB has pointed out, may lead to a significant increase in the number of modifications being considered "new transactions." While we certainly encourage disclosure for modifications when necessary of new material terms, conditions and risks, we would like to encourage the FRB to strike a greater balance between new disclosure and benefit to the consumer. We would not like to see a situation where classifying a transaction as "new" would unduly increase the consumer's costs or prevent the consumer from successfully refinancing. The proposal also provides that whenever a fee is imposed on a consumer in connection with a modification, a "new transaction" would occur. Some states have limits on fees on modifications which seems to eliminate many instances when modification fees might confuse the process. If the FRB were to consider revising this aspect of the proposal, it should consider some of these fee limitation arrangements.

#### *Improving the Coverage Test for the 2008 HOEPA Rules*

The proposal would require creditors to calculate a new "coverage rate" to determine whether a closed-end loan is a "higher-priced mortgage loan" subject to the FRB's 2008 HOEPA Final Rule because the FRB's 2009 Reg Z proposal incorporates more fees into the APR calculation and would thus cause a significant number of loans to be thrust into the high-priced category. The state regulators suggest instead of requiring the calculation of a new "coverage rate," it might be more efficient for the FRB to revisit what it means for a loan to be "higher-priced." It seems illogical for creditors to calculate a new figure which is similar to, but not exactly the

same as, the APR and use this figure as the basis of measurement. Furthermore, withholding this figure from the consumer as the proposal provides, conflicts with the nature of Reg Z which is to make the lending process more transparent. The state regulators encourage the FRB to revisit this aspect of the proposal as it does not seem wholly reasonable in its current form.

*Consumer's Right to a Refund of Fees*

The state regulators support the FRB's proposal to require a creditor to refund any appraisal or other fees paid by the consumer (other than a credit report fee), if the consumer decides not to proceed with a closed-end mortgage transaction within three business days of receiving the early disclosures and disclose the right to a refund of fees to consumers before they apply for a closed-end mortgage loan. We believe, however, if the consumer initiates an appraisal report transaction, the creditor should not be required to refund such a fee in the above circumstance.

*Other Proposed Changes*

The state regulators support the majority of the changes discussed in the NPR which go beyond the issues discussed above. We endorse the FRB's proposal to conform advertising rules for HELOCs to rules for closed-end mortgage loans adopted as part of the 2008 HOEPA final rule. The state regulators also support the NPR's clarification of how creditors may comply with the 2008 HOEPA final rule's ability to repay requirement when making short-term balloon loans. Further, we believe the proposal's designation of prepayments of FHA loans as constituting prepayment penalties for purposes of TILA disclosures and the 2008 HOEPA final rules is sound. In addition, we consider the revised disclosures related to credit insurance and debt cancellation and suspension coverage to be well constructed. And, we support the FRB making clear in its rule the requirement adopted by Congress over a decade ago, but often ignored by servicers, that servicers provide consumers upon request with the contact information of the owner of the loan. This would also conform Reg Z with the amendments to RESPA contained in Dodd-Frank section 1463.

Thank you for the opportunity to comment. We look forward to working with the FRB on other important consumer protection issues.

Best Regards,

Neil Milner

A handwritten signature in black ink that reads "Neil Milner". The signature is written in a cursive, flowing style.

President and CEO, CSBS

Doug Foster

A handwritten signature in black ink that reads "Douglas B Foster". The script is cursive and fluid, with the first name "Douglas" being the most prominent.

President, ACSSS

Darin Domingue

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President, AARMR