



CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.

Marysville Office

511 D Street
P.O. Box 2600
Marysville, CA 95901
(530) 742-7235
(530) 741-0854 Fax
www.crla.org

Ilene Jacobs

Director of Litigation
Advocacy and Training
ijacobs@crla.org

Austa Wakily

Rural Fair Housing
Center Manager
awakily@crla.org

Desraeli Fiedler

Foreclosure Intervention
Specialist Staff Attorney
dfiedler@crla.org

Central Office

631 Howard St., #300
San Francisco, Ca 94105
(415) 777-2752
(415) 543-2752 Fax

Jose R. Padilla

Executive Director

Luis C. Jaramillo

Deputy Director

Ralph Santiago Abascal

General Counsel
(1934-1997)

William G. Hoerger

Ilene Jacobs

Cynthia Rice

Michael Meurter

Directors of Litigation,
Advocacy and Training

December 21, 2010

Re: Federal Register: September 24, 2010 (Volume 75, No. 185) Docket No. R-1390
Regulation Z; Truth in Lending

Dear Board of Governors:

The Federal Reserve Board proposed to amend Regulation Z of 12 CFR §226 which implements the Truth in Lending Act (TILA) on September 24, 2010 in FRB Docket No. R-1390. These comments are submitted in response to a request for public comments contained within the docket. The rules proposed by the Federal Reserve would, among other things, revise the rules for the consumer's right to rescind certain open-end and closed-end loans secured by the consumer's principal dwelling. The proposed rule will require a borrower to tender the remaining balance of the loan prior to the lender releasing its security interest. This would represent a significant dilution of consumer protections in a time when many borrowers have suffered losses of epic proportions because of the excesses and poor practices of many lenders.

The proposed rule will remove effective deterrents, facilitate under-informed borrowing, and ultimately encourage lenders to foreclose, thus adding to the surplus of foreclosed homes, creating further decline in housing market, exacerbating unemployment and ultimately leading to a slower recovery of our economy.

One of the Federal Reserve's roles is to supervise and regulate the nation's financial institutions to ensure their financial soundness and compliance with banking, consumer, and other applicable laws. This includes ensuring that accurate information about the cost of credit is available to consumers. The purpose of TILA, as stated by the Board in 12 CFR §226.1, is "to promote the informed use of consumer credit by requiring disclosures about its terms and cost." The changes the Board is proposing regarding TILA rescission in no way further this mission and, in fact, undermine the purpose of TILA, as defined by the Board itself, by eliminating the only meaningful way to hold banks accountable for past failures to provide accurate information to consumers and to deter such conduct in the future. The right of rescission is the single most powerful protection homeowners have against foreclosures and, often times, the only means borrowers have to escape abusive loans. The right to rescind should be strengthened, not diluted, because it is one of the few protections a borrower has if a lender is unscrupulous.

The current law allows a borrower to rescind an illegal loan for up to three years after origination if the proper statutory disclosures were not given. The creditor must cancel the security interest once the borrower rescinds the loan, thereby losing its right to foreclose on the home. The homeowner is not required to tender the remaining balance of the loan until after the creditor has cancelled the security interest. Removal of the lien allows the homeowner to obtain refinancing. The right of rescission levels the playing field in a financial world in which the lenders have almost unfettered power to control the game.

TILA does not allow a homeowner to retain their home for free. The homeowner must tender the balance owed on the loan, excluding any finance charges, fees, and payments already made to the lender. The Board's proposed rule would undermine the fair and balanced manner in which the right of rescission should be applied by requiring the homeowner to pay the entire amount demanded by the creditor before rescission of the security interest. There is no question that in states like California, where foreclosures take place without the oversight of a court, rescission would require payment of all finance charges and fees, including illegal and excessive charges and fees. Unscrupulous lenders who misrepresented the terms of loans to borrowers and made loans with hidden and illegal charges and fees should not be able to profit from their illegal activities. The proposed rule creates less incentive to offer loan modifications and more incentive to foreclose and /or seek a deficiency judgment in an attempt to collect those improper amounts.

Requiring a homeowner to tender before cancellation of the security interest in effect eliminates the right of rescission for all but the wealthiest people. Given the current credit crunch and the disproportionate number of low income Americans placed in predatory loans, rarely will anyone be able to qualify for refinancing while the original security interest exists. Stripping the right of rescission from all but the wealthiest borrowers, who are often the most informed about home loans and least likely to be in a predatory loan, is tantamount to removing the requirement of TILA disclosures all together.

The threat of loss of their security interest significantly deters lenders from violating disclosure requirements. It promotes honest lending. The Board's proposed rule removes this deterrent, making it likely that lenders will make predatory loans and place borrowers in loans they cannot afford; likewise, if borrowers do not know the true cost of credit they are likely to take out loans they cannot afford to repay. These were two of the main causes of the current foreclosure crisis.

The proposed rules also allow greater tolerance for inaccurate disclosures. A lender is permitted to misstate a monthly payment by up to \$100 under the proposed rules without any penalty. This is more than 10% of the average monthly mortgage payment. A \$100 a month mistake may seem like a tolerable clerical error to the Federal Reserve or even a lender, but it is certainly a large amount to the average American. This proposed change is an inexplicable removal of consumer protections at a time when we are trying to create more consumer protections, not fewer or ineffective protections.

In our representative democracy Congress is the branch of government that most closely represents the will of the people. The people of this country have acknowledged that disjunctive and ineffective regulation of the financial industry was a significant cause of the financial crisis and collapse of our economy. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress transferred rule-making authority related to TILA to the newly created Consumer Financial Protection Bureau (CFPB) and tasked them with overhauling our system of mortgage disclosure and consumer protections. Rather than hastily making a major change to mortgage disclosure requirements, the Federal Reserve should abandon its proposed rule and allow the CFPB to address any necessary TILA reform as part of a cohesive and comprehensive reform of consumer protections.

The TILA regulations proposed in FRB Docket No. R-1390 should be withdrawn.

Sincerely,



Desraeli Fiedler
Foreclosure Intervention Specialist Staff Attorney
California Rural Legal Assistance, Inc.

cc: Ilene Jacobs
Director of Litigation Advocacy and Training
California Rural Legal Assistance, Inc.