



JEWISH ASSOCIATION FOR SERVICES FOR THE AGED

**LEGAL SERVICES FOR THE ELDERLY IN QUEENS**

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December 20, 2010

**SENT VIA EMAIL and First Class Mail**

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System,  
20th Street & Constitution Avenue, NW  
Washington, DC 20551

**Re: Withdrawal Request of the Proposed Truth in Lending Act Mortgage Regulations, FRB Docket No. R-1390**

Dear Secretary Johnson:

I write this letter on behalf of Legal Services for the Elderly in Queens (LSEQ) to request that you withdraw the Truth in Lending Act (TILA) mortgage regulations proposed in FRB docket No. R-1390. The proposed rule would eviscerate borrowers' extended right to rescind a mortgage loan, significantly reducing remedies for homeowners against lenders who violate TILA. Rescission has been the single most effective tool that my elderly homeowners have to remedy predatory and abusive mortgage refinance loans. Changing the rule governing rescission is unfair to homeowners, contrary to the intent of Congress, and makes little sense as a matter of public policy, particularly in the midst of a dire foreclosure crisis.

Legal Services for the Elderly in Queens is a non-profit organization established pursuant to Title III-B of the Older Americans Act to provide legal representation to those older adults (over age 60) with the "greatest social and economic needs." LSEQ provides free legal representation to low income seniors facing eviction and foreclosures, termination of their public benefits including SSI, public assistance, Medicaid and Food Stamps.

TILA specifically provides that if the material disclosures about the costs and terms of the loan are improperly made, the borrower has the right to rescind the transaction. Rescission does not mean that the note obligation goes away – only that the security interest is voided. Once the security interest is voided, the borrower must then tender to the lender the monetary benefit the borrower received from the loan.

Borrowers do not always have the ability to tender back the balance due under the note in one lump sum to the lender, because many borrowers are not able to obtain alternative financing. The practical effect, therefore, of the extended three-year right to rescind has been to create an incentive for the lender and homeowner – both realizing they are in an imperfect position – to settle the rescission claim through an affordable and sustainable loan modification.

The proposed regulation regarding rescission would substantially alter this balance in strong favor of the lender by conditioning avoidance of the security interest on tender. The extended right to rescind would therefore be nonexistent for the vast majority of homeowners.

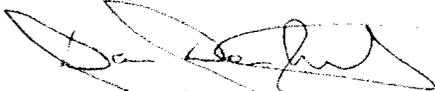
If the security interest is not considered void first, then there would be no incentive for lenders to negotiate with borrowers to work out an alternative to tender, such as a loan modification. Borrowers could not exercise their statutory right to rescind unless they were able to find alternative financing, which is extremely difficult in today's climate, particularly for borrowers who are behind on their mortgage payments. The extended right to rescind would therefore be worthless for the vast majority of homeowners. Furthermore, the proposal would require borrowers to pay the entire amount demanded by the creditor up front before the security interest is cancelled, wholly undermining the very purpose of the rescission right.

The only remedy left for a borrower against a lender who violates TILA would be the statutory damages of \$2,000 or \$4,000 (depending on when the loan was originated). Clearly, this nominal damage amount is neither a big enough stick to ensure lenders comply with TILA, nor a large enough remedy for an unlawful or abusive mortgage.

The Fed's proposed rule contradicts the clear order of rescission events set out by Congress in passing the Truth in Lending Act. It was not the intent of Congress to leave no real remedy for homeowners when lenders violate the most fundamental federal protection provided for consumers in mortgage lending transactions. If the proposed rule is passed, it would cause irreparable harm to homeowners and communities, and make lenders less accountable for abusive practices. For these reasons, we strongly urge the Board of Governors of the Federal Reserve to withdraw the proposed mortgage regulations in FRB Docket No. R-1390.

Thank you for this opportunity to comment. If I can provide any additional information please feel free to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Dougherty", written over a faint, illegible typed name.

Donna Dougherty  
Attorney-in-Charge