December 23, 2010

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

Re: Regulation Z: Docket No. R-1390
Truth in Lending

Dear Secretary Johnson:

Quicken Loans Inc. ("Quicken Loans") is pleased to submit its comments on the Federal Reserve Board's proposed changes in Regulation Z, Truth in Lending ("TILA") rules. By way of background, Quicken Loans is an independent Detroit, Michigan-based conventional and FHA retail residential mortgage bank. We have been in business since 1985, and have approximately 3,000 employees. We do business in all 50 states and are one of the nation's five largest retail mortgage lenders, one of the five largest FHA mortgage lenders, and the largest online lender. We expect to close over $28 billion in retail mortgages this year.

Quicken Loans recognizes the importance of TILA and RESPA reform. However, we are very concerned that various agencies are working on reforming both TILA and RESPA at the same time. With the passage of the Dodd-Frank Act this past summer, the Bureau of Consumer Financial Protection ("CFPB") was established to protect consumers across multiple financial industries. The CFPB was authorized to harmonize the requirements of RESPA and TILA, something multiple agencies have tried to do for many years prior. Now, the Federal Reserve Board is undertaking a massive change to the system just months before the CFPB is set to begin operating.

In August of this year, the Board issued five different rules in various states of completion that sought to change the mortgage process. With pending rules still to come from proposals from as far back as August of 2009, it may be time to step back and let lenders acclimate to the new rules before issuing others. We applaud the efforts of the Board to simplify the process, but we are concerned that these rules may be coming on top of other rules that may be coming from the CFPB through the timeframes listed in the Dodd-Frank Act. Though the goal of the Board is to simplify the process for

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the consumer, we fear that the deluge of rules may only have the exact opposite effect for potential borrowers.

If the Board decides to proceed with bypassing the CFPB in favor of its own rules, we believe it would be advantageous to approach the rule in two ways. First, we would like to see an extension of the comment period so that all parties have time to adequately examine the proposed rule. The proposed rules cover many programs and procedures, and the 90 day comment period is not long enough to adequately examine and give final approval or comment on the massive federal register document. Therefore, we ask that the timeline be extended so that companies have adequate time to examine and provide the Board with deep and insightful comments. We understand the Board's goals in reforming the housing market, but we also believe that fast implementation of rules can further compromise the integrity of an already fragile housing market. Therefore, we hope the Board will take great care with considering the comments on its proposals before issuing final rules, and at that time, we hope the Board gives companies sufficient time to adapt to the torrent of new rules that they will have to implement.

As we approach a new system of operation for TILA and RESPA, it is imperative that all actions to improve and change TILA and RESPA be taken with the upmost caution and thought. Asking companies to go through extensive processes to change and modify current systemic structures to meet the new requirements is burdensome and time-consuming for companies who may be asked to completely redo these structures again once the CFPB comes out with its own regulations. We ask that the Federal Reserve take extra caution with these proposed rules, and those that still may be coming, so that companies do not have to dramatically change their systems again once the proposed new rules go into place.

Rescission

Quicken Loans agrees with many of changes to the rescission process that have been outlined in the proposed rule. We like that the rule reduces some of the confusion that has surfaced over time. We are pleased to see so many helpful solutions in the rule. We have concerns with certain sections, however. For example, we think that the consumer should be asked to submit the rescission notice to one specific address or website so that companies are not confused by multiple requests in different formats. This step would eliminate much of the confusion that borrowers and servicers encounter in the rescission process. Additionally, we would think it would be practical for the Federal Reserve to require the borrower to state the loan number in the rescission notice. This step would again help to eliminate confusion and reduce the potential for a servicer to misplace, lose, or miss a notice of rescission due to the fact that added research would be needed to execute the notice. We request that the Board add rules to require the rescission notice to include the loan number on the form.

One issue that touches many aspects of the proposed changes to rescission is the differential treatment of "same creditor" refinancings and new creditor refinancings. Certain same creditor refinances are exempt from the right to rescind. We believe these differences are not warranted because there is no substantive difference to the consumer in a same creditor refinance transaction versus a new creditor refinance transaction.

Were the distinction implemented as proposed, it would create additional work for a creditor to ensure that it is not the original creditor, and we believe it is possible that the market will place a different, higher value for new creditor refinancings than same creditor refinancings because of their different legal status. Moreover, the proposal would make the exemption for same creditor refinances and modifications meaningless, given that most loans are held in securitization trusts and, therefore, rarely result in the original creditor being the current noteholder (except in the case of loan originated and held for portfolio). We do not see a reason for these noteholders to be treated differently.

The policy justification for the differential appears to be the possibility of a predatory portfolio creditor that refinances the consumer's loans to strip equity or perhaps even to bury compliance defects in past loans. In our view, the issue of the abusive portfolio creditor can be better addressed by the adoption of an anti-evasion rule, and that a refinancing offered or entered into for the purpose of hiding or burying past compliance errors would not serve that purpose, but otherwise same creditor refinancings and new creditor refinancings should be treated the same across the board and allow both types of refinances to be eligible for the exemption if the other requirements are met.

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Quicken Loans also has concerns with ability of the courts to modify the rescission process. We would like to see the role of the courts limited, especially as this relates to tender requirements. By letting a consumer tender in installments would be problematic, especially when the security interest would be eliminated before payment on the final installment. Tender in installments is problematic on many levels, though, since it creates further problems with recordkeeping and more hurdles to jump through that can lead to further mistakes. Avoiding these types of missteps should be a top priority.

We also view as problematic the Board's proposal to add settlement charges to the list of material disclosures. With this change, lenders would be held liable for rescission based on a potential error in the material disclosures. With the increased liability that will be placed on lenders, we fear that closings will become even more difficult and cumbersome, especially if changes occur within the transaction. Congress has addressed these issues at length within RESPA. Seeing as they have not dealt with it, we believe that further changes would prove problematic.

Quicken Loans also has some concerns with the regulations implementing the Mortgage Disclosure Improvement Act, which requires creditors to provide certain disclosures seven days prior to closing. If a change occurs in the disclosures during the required waiting period, the creditor must then re-disclose and provide another three-day waiting period prior to consummation. These two periods can be waived if a consumer has a personal emergency. This situation is very close to the ability a buyer has as it related to the right to rescind that is discussed at length in this proposal. These two similar systems pose new concerns. We seek clarification that no presumption would arise because a buyer seeks a waiver for one of the waiting periods, but not the other.

Loan Modifications

Despite some shortcomings in the Home Affordable Modification Program (HAMP), Quicken Loans believes the program has been reasonably successful in helping homeowners stay in their homes. More than 1.5 million Americans have been helped through HAMP or through other modification programs, and more efforts must be made to give homeowners a chance to modify and stay in their home. We understand that TILA disclosures are required for modifications, but we hope the Board will change its stance with respect to the requirement that a borrower go through all TILA

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requirements, like re-disclosures and waiting periods, so that a borrower does not have to wait before they have a chance to modify their loan. A homeowner refinancing a loan on their own to take advantage of lower rates is in a much different situation than one who is seeking a modification during crisis. In a modification, a homeowner is seeking refuge in a distressed situation in the face of a default, be it by change in income, emergency, or family situation. Therefore, a consumer will not be in the market to shop around for a better deal; the borrower will be looking for the quickest and easiest solution to the problem and, therefore, will not need to go through the entire TILA process. However, it is important that the conditions and the terms of the loan are made clear. With work done through other agencies and with greater knowledge of the problem, there are plenty of other protections in place to avoid the disclosure of unclear or inappropriate terms.

Quicken Loans also hopes the Board will take steps to simplify the triggers for when TILA disclosures would be required in a modification. For example, the Board could require new disclosures if a risky feature was added to a loan or if the interest rate were increased. This type of change by the Board would ensure that creditors continue to work toward modifications that are beneficial for consumers.

One of our greatest concerns relates again to rescission. The proposed rules exempt modifications from rescission if they 1) do not involve the original creditor that is the also the current holder of the note; 2) do not involve an advance of new money; and 3) do not add a new security interest in the consumer's principal dwelling. However, we believe the Board is off base when they state that the potential burdens connected to the right of rescission would not discourage modifications. We are concerned that by placing this burden on servicers, they will take the safe path and attempt to avoid modifications. This is why a limited exemption is too dangerous, and why we believe a less strict definition would be the key to helping servicers engage in modifications.

Regarding the exception for workout modifications, Quicken Loans would also like to see a proposal added that would create a much broader definition. We think the definition should include loans that are nearing default. Many borrowers wait to contact their lender until they have already missed at least one payment. By expanding the exception for modifications to those in danger of default, creditors will have an added need to modify at such a vital point before a borrower enters default. If the creditors must then provide new TILA disclosures, this will be another hoop a borrower and a servicer will have to jump through, thus diminishing the chances of the borrower being helped at an early stage. Therefore, Quicken Loans suggest that the same factors a lender considers in assessing whether a borrower is in imminent danger of default be used for a borrower who states that they will not be able to make future payments on a loan. This way, borrowers who are in trouble have options before they miss one payment.

We also have concerns related to escrow items being classified as fees. The Board's comment claims that fees such as points, underwriting fees, and new insurance premiums imposed on the consumer include any fee that the consumer pays out-of-pocket or from loan proceeds. The Board further adds that if a creditor does not impose new insurance premiums or requirements but instead merely continues coverage, such costs are not then transferred to the consumer. However, this implies that if insurance premiums or taxes increase with a modification, a new transaction will be triggered. We do not agree that such changes done so by a third party should thus impact whether new credit is extended.

We also seek additional clarification on what constitutes an actual application when it comes to a modification. While the Board supports RESPA's definition of an application, we believe that it does not apply in this case and will create unneeded confusion in the modification process. The standard definition from RESPA is too broad in this case where it could be interpreted that an application for modification has been received if some information needed to underwrite the borrower is available on file. However, if we look to the HAMP to determine the criteria of when to begin assessing a borrower for a modification, we see that they require a hardship letter, various IRS forms, income statements, and a new certification under Dodd-Frank that states they do not have previous criminal convictions. As you can see, the RESPA definition does not mesh with the goals and rules within the HAMP program. We seek further information as it pertains to

As we have already discussed above, we hope the Board will consider these changes carefully with respect to the current housing market. At the present time, we have concerns that servicers will not be able to adequately adjust to new rules in a quick and timely manner. At a time when servicers should be dedicating their time and available resources to eliminating irregularities in the modification and foreclosure realm, we feel it is troublesome that the Board would ask servicers to shift away from ensuring the quality of foreclosures and modifications. We think these new rules will only further harm the foreclosure and modification process as servicers dedicate their time to implementing weighty, expensive, and time-consuming changes. The Board should seriously consider delaying the implementation of the rules discussed above until the housing market fully recovers. At that time, the CFPB could look at this issue again. However, for the time being, speedy and advantageous refinances should be a goal of the Board.

New Triggers for Higher-Priced Mortgages and Mortgages Subject to HOEPA

Quicken Loans believes that the new triggers for higher-priced mortgages are problematic and that issues surround the transaction coverage rate will lead to further confusion. Instead of looking at an all-in APR option (which the Board says would lead to a high number of higher-priced mortgages), the Board has proposed a new concept for high-priced mortgages. Despite claiming that this would be a "simple modification," we believe that the change would mean an expansive change for lenders. The Board does not require lenders to disclose the transaction coverage to consumers, and the Board states that the transaction coverage rate is solely for the purpose of determining whether the loan is a higher-priced mortgage. This creates added problems for a consumer when they do not know whether they have a higher-priced mortgage loan because they never receive a disclosure for this type of calculation.

The proposed rules from the Board do not address the fact that the all-in APR will bring many more loans under the jurisdiction of HOEPA. Creditors do not usually make loans that are subject to HOEPA. Though the Board wants to eliminate the effect the all-in APR on the points and fees test, has the Board does not propose to use the transaction coverage rate in place of the APR for the HOEPA trigger. Obviously, if this is not corrected, a large number of loans will be rejected since they would be covered by HOEPA and, thus, less credit would be available to consumers.

Ideally, the Board would reconsider the all-in APR system. We have concerns that by including third-party fees in the APR will change the cost of the credit as imposed by the creditor providing disclosures, thus making it quite difficult for consumers to compare pricing. We believe that the Board should maintain its current APR calculation so that the market is not disrupted further. We see no need for an introduction of a confusing system at this time.

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However, if the Board decides to go forward with their plan, we have a few areas where clarification and reconstruction will be vital. First, any large changes to APR or APOR for coverage purposes should coincide with the new requirements under Dodd-Frank. Having the Board's rule and Dodd-Frank on separate paths will lead to more confusions and redundancy, something Dodd-Frank hopes to avoid. Second, if a coverage rate were created for higher-priced mortgage loans, there could be potential ramifications on a state level. Whereas Dodd-Frank seeks to work with individual states on issues, the Board seems content with bypassing state regulations, laws, and concerns. We hope the Board will hold-off on this portion so that state requirements do not create even more confusion in this area. If nothing else, we hope that language is included to give states more discretion, much like the language in Dodd-Frank.

Refunds

The Board's proposed regulation states that a consumer has the right to receive a refund for the fees if the consumer decides not to proceed within three business days of the receipt of the early disclosures. We have reservations about this provision. First, a creditor may simply refrain from imposing fees until more than three days after disclosures have been given to avoid being held responsible for the refund. Second, creditors may choose to not lock a rate or order an appraisal during this time because no non-refundable fees will have been received to pay for these additional expenses. This will only cause confusion and a further lengthening of the mortgage process. We suggest strongly that this change not be made.

Once again, because the CFPB will be directly responsible for the financial literacy and safety of consumers, we feel this issue should be addressed by the CFPB. We believe that this issue still needs further work to avoid confusion not just for lenders, but primarily for the consumer. It is not clear whether the refund is necessary if a borrower wants to shop around. To ensure a competitive and strong mortgage market, consumers should be allowed the time to shop. However, as the rule stands now, it is not clear whether consumers will explicitly have this option.

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Transaction Coverage Rate

To avoid the inappropriate classification of prime loans as HPML, the Board proposes for lenders to compare the loan's "transaction coverage rate" (instead of its APR) to the average prime offer rate.

Lenders would calculate the transaction coverage by using the loan's interest rate, the points, and any other origination charges the creditor and a mortgage broker (or an affiliate of either party) retains. The transaction coverage rate would not include the other closing costs that, according to the 2009 Proposal would be treated as finance charges for purposes of the APR that is disclosed to the consumer. According to this new calculation, the Board believes that the transaction coverage rate would be closely comparable to the average prime offer rate. The transaction coverage rate would not be disclosed to the consumer and would be solely for coverage determination purposes.

The Board acknowledges that by creating this new metric, lenders will incur costs, including training staff and modifying software and other systems. Nevertheless, the Board believes these costs should be relatively small because the Proposal would necessitate only a one-time modification to creditors' systems. Also, the costs of the new metric would be offset by the benefits of ensuring that the 2008 HOEPA protections apply only to loans for which they were intended, for example, subprime mortgages.

Prepayment Penalties on Loans

The Board's proposal treats as prepayment penalties charges calculated by applying the interest rate to the days after the prepayment date and before the end of the prepaid period. The Federal Housing Authority (FHA) does not treat this as a prepayment penalty. We believe that this change would lead to greater disparity between the two agencies. We also worry about the costs related to these loans, and we urge the Board to reconsider this proposal.

Advertising Rules

Quicken Loans supports the actions of the Board to cut out deceptive advertising practices in the mortgage market. We support all of the provisions included within this proposal, but we hope that the Board will work closely with the Federal Trade Commission on this issue. The FTC has already

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issued similar rules in this department, and we hope the Board will make coordination a top priority before final rules are released. Additionally, we hope that whatever conclusion the Board or the FTC comes to, that the two agencies make an effort to share their information with the CFPB. Consistency and clarity should be a key in guaranteeing that deceptive practices are avoided.

We thank you for this opportunity in allowing us to comment. Should you have any further questions, please feel free to contact me at (313) 373-7474 or at BillEmerson@quickenloans.com.

William Emerson
CEO
Quicken Loans