



ADMINISTRATIVE OFFICE:
DOROTHY O. COOK COMMUNITY LAW CENTER
8787 STATE STREET, SUITE 201
EAST ST. LOUIS, IL 62203

310 EASTON ST., STE 330
ALTON, IL 62002
TELEPHONE: (618) 462-0029
FAX: (618) 463-1101

SATELLITE OFFICES:
CHARLESTON
DECATUR
MT. VERNON

REGIONAL OFFICES
NORTHERN
SPRINGFIELD
SOUTHERN
CARBONDALE
EASTERN
CHAMPAIGN
WESTERN
ALTON
EAST ST. LOUIS

December 21, 2009

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

Re: Truth in Lending Proposed Rule: Regulation Z Part 226; Docket No. R-1366

Dear Members of the Federal Reserve Board,

I write on behalf of Land of Lincoln Legal Assistance Foundation's Homeownership Task Force. This letter is in response to the proposed changes to the regulations under the Truth in Lending Act. Organized in 1972, Land of Lincoln Legal Assistance Foundation, Inc. is an Illinois not-for-profit corporation whose mission is to pursue civil justice for low-income persons through representation and education. Our goals are: (1) to promote economic security, adequate shelter and health care; (2) to alleviate domestic violence and improve family stability; and (3) to advance the interests of vulnerable populations. Land of Lincoln is the sole provider of the full range of legal services for low-income persons in 65 counties in central and southern Illinois.

We have helped hundreds of low-income homeowners seeking assistance with their mortgages because they are facing foreclosure. As part of the services we provide to homeowners, we examine their mortgage documents to determine whether they have any defenses or remedies, included those provided by the Truth in Lending Act, that they can assert in foreclosure.

We applaud the Board's ongoing efforts to protect consumers through improvement of the disclosure rules and expansion of the substantive rules. In an attempt to be brief, this letter will highlight those proposed changes we think are the most useful, as well as offer comments about where we believe the Board could more aggressively address unfair mortgage practices and strengthen mandatory disclosures.

Yield Spread Premiums. We strongly endorse the Board's ban on yield spread premiums that are based on loan terms or conditions, including the loan principal amount. In our practice, we regularly encounter consumers who are unaware they received a higher interest rate in their mortgage because their mortgage broker received a yield spread premium from the

originating lender. Many do not know that their broker was also paid by the lender. Most, if not all, of our clients whose mortgage brokers received a yield spread premium would have qualified for better loan terms than the loan terms they received. The Board should adopt the full ban and resist any calls to weaken or dilute it. Additionally, Land of Lincoln endorses the optional proposal that prohibits steering consumers to particular loans and products because the loan originator will receive greater compensation. The prohibition on steering must be included in the final regulation.

Disclosures. We appreciate the Board’s proposals to make disclosures more consumer-friendly and easy-to-read. Although they are not wholesale protection from unfair and risky lending practices, they will provide borrowers with a more meaningful opportunity to shop for credit. *In particular, we are pleased with the changes to the annual percentage rate or “APR,” by including credit insurance premiums, fees for recording, and most closing and settlement costs in the finance charge.*

However, we believe the disclosure rules could be strengthened in at least the following ways:

- Provide the consumer with the remedy of rescission if the lender fails to provide the consumers with the “Key Questions to Ask About Your Mortgage Application,” and “Fixed vs. Adjustable Rate Mortgages” at application. Lenders often fail to provide consumers with mandatory disclosures. Absent a stick—e.g. rescission—lenders will continue to ignore rules requiring timely disclosure.
- Include in the form, “Key Questions to Ask About Your Mortgage Application,” the query, “Does my monthly payment include property taxes and homeowners’ insurance?” Many of our clients who were borrowers during the subprime lending era were promised that their property taxes and homeowners’ insurance would be escrowed and included as part of their monthly payment to the lender. Mortgage brokers enticed borrowers to refinance with promises to lower their monthly payments, but did not include the escrowing of taxes and insurance because it would have made borrowers’ monthly payments larger (thus causing many consumers to balk at refinancing). As a result of some brokers’ duplicity, our clients were surprised at the end of the year to learn that their taxes and insurance weren’t escrowed when bills arrived. It is a tremendous hardship for low-income individuals to make large lump sum payments towards these expenses, particularly when they are unexpected. Whether or not the loan will include escrow needs to be conspicuously addressed by these disclosures, as many less sophisticated borrowers do not understand what the word “escrow” means.
- Require final disclosures seven days before closing and provide the right to rescind the loan if the disclosures are not timely provided. A significant number of the homeowners we have seen in the past several years arrived at closing to find their loan terms changed from what they were originally promised; others were unaware of the changes until they showed up at our offices when they were in trouble. Once a consumer arrives at closing, it is far too late to back out of a loan amidst the pressure of the lender/broker/closer and the psychological commitment of the consumer to purchasing the home or refinancing. The study the Board commissioned from ICF Macro, “Summary Findings: Design and

Testing of Truth in Lending Disclosures for Closed End Mortgages,” found that consumers routinely completed loan transactions even when terms were changed at the last minute and they had reservations, because they felt they had no options. *See* p. iv of the study.

The Board proposes two alternatives to this problem: alternative one—which would require re-disclosure and a three day waiting period if any loan term changes; and, alternative two—which would require re-disclosure and a waiting period only if the APR changes. The Board should adopt alternative one, but extend the waiting period for seven days to give the borrower time to contemplate the effects of the changes, the costs and risks involved; consult an attorney or other unbiased professional; and potentially, shop for alternative credit. Three days is insufficient time to contact additional lenders and extend a closing date.

- Clarify that changing the term “finance charge” to “interest and settlement charges” does not affect the right of rescission for underdisclosure of the finance charge.

Prohibit all negative amortization loans and Payment Option ARMS. The Board proposes new disclosures for borrowers considering negative amortization loans and payment option ARMs. The disclosures do not go far enough. The Board should use its authority to stop unfair lending practices to prohibit all negative amortization loans and payment option ARMs secured by a borrower’s principal residence. These loans, while possibly suitable in the commercial real estate context, are unsuitable for homeowners and are typically abusive. These products are often offered to individuals with marginal credit, who are unsophisticated consumers and vulnerable to predatory practices. The study conducted by ICF Macro demonstrates that consumers do not understand negative amortization loans and payment option ARMs, and even the disclosures proposed by the Board failed to educate consumers on how these loans actually worked. *See* p. vi of the study. The Board should demonstrate its commitment to ending predatory practices by outlawing these mortgages.

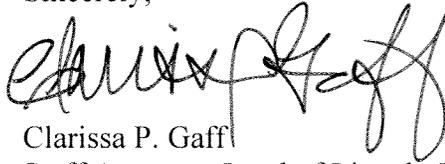
Require underwriting for adjustable rate loans to the highest possible payments that may be required under the loan terms. The Board should require underwriting for all adjustable rate mortgages to determine whether a borrower can repay the loan payments when the loan has adjusted to the highest possible interest rates. Many of our clients ended up with adjustable rate mortgages because a mortgage broker told them it was the best loan he/she could get them at the time and promised to refinance them long before the interest rate reset. Of course, when their rates adjusted, the brokers refused to take their calls and some of these clients ended up in foreclosure. Underwriting these loans only at the teaser interest rate hurt both borrowers, who lost their homes, and investors, who ended up with scores of devalued homes in their portfolios. Underwriting loans at the highest possible payments protects homeowners and investors alike. While it makes good sense to underwrite loans this way, lenders have consistently failed to do it as they sought substantial profits. A mandatory requirement is the only way to protect consumers and investors.

Require determination of borrower’s ability to repay for all loans. The Board should use its authority to extend the requirement that lenders determine a borrower’s ability to repay a loan to all loans secured by a borrower’s primary residence, not just higher cost loans. The

explosion of foreclosures has its origins in a number of problems, but at least one was the failure of lenders to appropriately underwrite loans and require the documentation necessary to demonstrate that a borrower could afford the loan they acquired. A number of our clients could not afford their loans at inception and despite their valiant efforts to make their payments, many ended up losing their homes in foreclosure.

Thank you for your consideration of these comments. There are many other issues which merit comment; for those, we refer the Board to the comprehensive comments provided by the National Consumer Law Center. We looked forward to the Board's adoption of strong consumer protections in the near future.

Sincerely,



Clarissa P. Gaff
Staff Attorney, Land of Lincoln Legal Assistance Foundation
On behalf of its Homeownership Task Force

/CPG