



## ALBANY LAW SCHOOL

80 NEW SCOTLAND AVENUE, ALBANY, NEW YORK 12208-3494  
TEL: 518-445-3358 FAX: 518-472-5878 WWW.ALBANYLAW.EDU

*Elizabeth Renuart*  
*Assistant Professor of Law*  
erenu@albanylaw.edu

October 21, 2010

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**Re: Proposed Rule on Truth-in-Lending Act (TILA) Rescission and  
Reverse Mortgages  
FRB Docket No. R-1390**

Dear Ms. Johnson:

The undersigned professors who teach commercial law, consumer law, or in a clinical setting write to request the Board to withdraw the regulations proposed in the Federal Register on September 24, 2010 for the following reasons.

### **I. The Board Should Defer to the CFPB**

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress transferred rule-making authority related to the TILA to the new Consumer Financial Protection Bureau (CFPB). The Board must cede its authority on July 21, 2011.

Under TILA, the effective date of regulations containing new disclosure requirements must be the first day of October which follows by at least six months the date of promulgation. 15 U.S.C. § 1604(d). As a result, new Board requirements cannot be effective until after the Board loses its jurisdiction.<sup>1</sup>

The Dodd-Frank Act added new substantive protections to the TILA and charged the CFPB with defining additional unfair, deceptive, and abusive practices, all of which will

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<sup>1</sup> The Board may issue an interim regulation under § 1604(d) but only where it makes a finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. To our knowledge, the Board cannot meet this standard.

be addressed through CFPB regulations. The CFPB should weave the current TILA regulations into its own coherent regulatory system, giving due consideration to its statutory mandates and to its priorities. The Board should not make that job more difficult or time-consuming by issuing eleventh-hour regulations.

## **II. The Board's Proposals Significantly Weaken the Consumer's Ability to Defend Against Lender Illegalities**

Rescission is the most vital remedy available to homeowners under the TILA. If the creditor violates certain critical disclosure and substantive rules, the homeowner may cancel the mortgage transaction.<sup>2</sup> The homeowner then owes the creditor the principal balance minus interest paid and certain charges. The creditor's security interest in the home is voided but the remaining principal is not extinguished. The homeowner does not get a free ride, however.

A valid rescission creates some leverage and provides homeowner with a fighting chance to save her home in a foreclosure. In contrast, the TILA damages provisions compensate the homeowner up to \$4,000 for all possible disclosure violations. The statute of limitations for a damage claim is only one year; whereas, the homeowner can rescind for up to three years. Consequently, statutory damages will not offset a delinquency in a sufficient amount to give the homeowner a chance to refinance an abusive loan into an affordable one.

The Board's amendments affecting the rescission remedy are lengthy, unduly complex, and transformative. For starters, they create two sets of consequences depending upon whether the rescission occurs before or after the creditor disburses funds. Before disbursement, the sequential process the creditor and consumer must follow remains true to the Act (§ 1635(b)). Following disbursement, however, the proposal inverts the statutory scheme which Congress enacted for a particular purpose (to reverse the common law rescission process). The result is a procedure that will kill the vitality of this important remedy from the homeowner's perspective. Moreover, this change conflicts with the Act and is illegal.

Other examples of monumental changes include: redefining which disclosure and substantive protections trigger rescission; permitting the creditor to inaccurately disclose the monthly payment by up to \$100, a tolerance that did not exist previously; and, declaring that the rescission remedy does not apply in the event of a refinancing by a creditor other than the current holder or when the consumer pays off the obligation, despite contrary language in the Act.

In short, we believe that amending the rescission regulations and overhauling the reverse mortgage disclosures after the Board became aware that its jurisdiction would end soon is ill-advised.

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<sup>2</sup> The list of violations that trigger rescission is short when compared to the universe of disclosure and substantive rules appearing in the Act and the regulations.

Respectfully,<sup>3</sup>



Elizabeth Renuart, Assistant Professor of Law  
Albany Law School

Kurt Eggert, Professor of Law and Director of the  
Elder Law Clinic  
Chapman University School of Law

Kathleen Engel, Associate Dean for Intellectual  
Life and Professor of Law  
Suffolk University Law School

Lea Krivinkas Shepard, Assistant Professor  
Loyola University Chicago School of Law

Cathy Lesser Mansfield, Professor of Law  
Drake University Law School

Christopher L. Peterson, Associate Dean for  
Academic Affairs, Professor of Law  
University of Utah

Katherine M. Porter, Robert Braucher Visiting  
Professor, Harvard Law Professor (10-11)  
University of Iowa College of Law

Norman I. Silber, Senior Research Scholar and  
Visiting Professor of Law  
Yale Law School

Alan M. White, Associate Professor of Law  
Valparaiso University School of Law

Lauren E. Willis, Professor of Law  
Loyola Law School

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<sup>3</sup> Affiliations are provided for identification purposes only.