

South
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Legal
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December 18, 2010

SENT VIA EMAIL

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 Ms. Johnson:

I write on behalf of South Brooklyn Legal Services (SBLS) to request that you withdraw the Truth in Lending Act (TILA) mortgage regulations proposed in FRB docket No. R-1390. The proposed rule would, in effect, wholly undermine the homeowner's ability to rescind a mortgage loan obtained through an abusive and predatory refinance.

For more than 10 years, the SBLS Foreclosure Prevention Project has represented low- and moderate-income homeowners at risk of losing their homes due to predatory lending practices. Through litigation and advocacy, we have been able to save hundreds of homeowners from foreclosure. Our success has been, in part, due to the availability of rescission as a remedy for certain violations under TILA.

TILA was enacted to promote the informed use of credit by consumers by requiring meaningful disclosure of credit terms. Where a lender fails to comply with disclosure or notice requirements, the borrower has an extended three-year right to rescind the transaction. Rescission does not release homeowners with mortgage loans from the note obligation; it only voids the security interest. Homeowners must then tender to the lender the proceeds that they received from the loan.

The proposed rule makes avoidance of the security interest contingent on tender, thereby placing the homeowner at an extreme disadvantage not contemplated by Congress. First, this contingency eliminates the incentive for lenders to negotiate with borrowers to work out an alternative to tender, such as a loan modification. Moreover, borrowers would be powerless to

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exercise their statutory right to rescind unless they were able to obtain what has become increasingly elusive alternative financing. The extended right to rescind would therefore be worthless for the vast majority of homeowners. Further, contrary to the very purpose of the right to rescind, the proposal would require borrowers to pay the entire amount demanded by the creditor up front before the security interest is cancelled. For myriad borrowers, such payment constitutes a tremendous barrier, especially in cases where the homeowner is elderly and/or disabled and living on a fixed income.

The case of Mr. and Mrs. O, an elderly couple who purchased their home in Brooklyn over thirty years ago, amply illustrates the need to maintain rescission as a powerful tool to provide leverage in litigation and settlement conference negotiations. Mr. O receives veteran's disability benefits for shrapnel in his chest and a missing eye sustained in the Korean War. Both he and his wife also receive Social Security. Due to their limited income, Mr. and Mrs. O obtained a refinance in 2007 in order to cover funeral expenses for a family member. The mortgage broker who had been referred to the couple by a contractor canvassing the neighborhood assured them they would get a fixed rate mortgage with lower monthly payments. To the contrary, upon closing on the loan, they were strapped with an unaffordable adjustable rate mortgage.

Mr. and Mrs. O reached out to the City Bar Justice Center for help, who, with the assistance of the Federal Reserve Bank of New York, determined that the loan was rescindable due to inaccurate material disclosures. After the servicer of the loan commenced a foreclosure action against the couple, they attempted to rescind the loan. At that point, SBLI agreed to assist them. Despite Mr. and Mrs. O's request for a loan modification under the Home Affordable Modification program (HAMP), the servicer refused to properly review the couple's application. Instead, the servicer filed a motion for summary judgment. SBLI opposed the motion by, among other things, raising the originating lender's failure to disclose properly and accurately the amount of payments scheduled to repay the obligation. After SBLI filed its opposition, the servicer retreated from its earlier position that Mr. and Mrs. O did not qualify for a loan modification under HAMP, and extended to them a HAMP modification, which they accepted.

Had the proposed rule already taken effect, Mr. and Mrs. O would have been precluded from raising their right to rescind due to TILA violations because they simply would not have been able to tender. Please ensure that the protections for victims of predatory lenders and other vulnerable borrowers under TILA remain intact by withdrawing the proposed mortgage regulations in FRB Docket No. R-1390. Should the proposed rule be passed, it would cause untold harm to homeowners and communities, while enabling lenders to engage in abusive practices with impunity.

Thank you for this opportunity to comment.

Sincerely,

/s/

Laurie Izutsu-Keener

Staff Attorney

Foreclosure Prevention Project