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Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

Re: Proposed Truth-in-Lending Mortgage Regulations (FRB Docket No. R-1390)

Dear Board of Governors:

On November 24, 2010, AARP wrote to request that the Board of Governors withdraw its proposed rule changes to the Truth-in-Lending (TILA) mortgage regulations in FRB Docket No. R-1390. While we acknowledged that portions of the proposed rule would benefit many older consumers, we highlighted two sets of issues that we felt would be detrimental to our members: the proposed safe harbor provisions for cross marketing of annuities and investment products in connection with reverse mortgages and proposed changes to restrict consumers' right of rescission. We continue to believe that the proposed changes in these two areas greatly undermine existing consumer protections, break with Congressional intent, and exceed the rulemaking authority given to the Board.

Having expressed our general concerns regarding these sections of the proposed rule, AARP respectfully submits the following supplemental comments in response to specific proposed rule changes in FRB Docket No. R-1390. Our comments consist of two parts. Part I includes comments on proposed changes relating to general rules for reverse mortgages [FR pages 58704-58709, Section 226.33] and prohibited acts and counseling for reverse mortgages [FR pages 58710-58711, Section 226.40]. Part II provides AARP's comments on the consumer rescission sections of the proposed rule [FR pages 58700-58704, Sec. 226.23].

In both sets of comments, AARP has sought to highlight proposed rule revisions where the Board, in our view, has used its exemption authority to create new legal requirements that are not consistent with the clear language of the relevant statutory provisions. While the exemption authority given the Federal Reserve is broad, it is not unlimited. The Board's statutory exemption authority is clearly linked to a finding that a statutory provision for which an exception is being created "does not provide a meaningful benefit to consumers in the form of useful information or protection." [15 U.S.C. § 1604(f)] In the comments that follow, we will use this principle of "meaningful benefit to consumers," as well as the factors listed in section 1604(f), as the standard by which we determine whether or not a proposed rule change is consistent with the Board's exemption authority.

Finally, as discussed in Part I of these comments, AARP is concerned that the proposed rule preempts the specific authority delegated to the Consumer Financial Protection Bureau (CFPB) by the Dodd-Frank Wall Street Reform and Consumer Protection Act [P.L. 111-203] to study marketing practices and issue regulations governing reverse mortgage transactions. While we are submitting comments on the reverse mortgage sections of the proposed rule, AARP strongly urges the Board to defer issuing final regulations and permit the CFPB to engage in the broader research and rulemaking that Congress intended.

Part I. Proposed Rule Revisions Relating to Reverse Mortgages

BACKGROUND: Recent Developments Regarding Reverse Mortgages

The Board's decision to review the consumer disclosure and protection requirements associated with reverse mortgages comes at a time of major changes that have transformed that industry and the loan products offered to consumers. Until 2007, reverse mortgages insured by the Federal Housing Administration (FHA) under the Home Equity Conversion Mortgage (HECM) program constituted over 90 percent of the market, and virtually all of those loans were purchased by Fannie Mae. Since Fannie Mae purchased the loans and held them in its portfolio, they set the terms of the loans. As a result, all HECMs made during that era were variants of an adjustable rate, line of credit model. Even when borrowers elected to take a large lump sum at closing or monthly advances, the underlying financial model was a line of credit – an approach that allowed for flexibility in payment options and the ability to convert from one payment option to another.

In the wake of the meltdown in the mortgage markets, the reverse mortgage market has been radically transformed. The small proprietary market has essentially disappeared, and Fannie Mae's role as purchaser has rapidly diminished until it recently announced that it would no longer purchase reverse mortgages. In its stead, almost all HECM loans are now funded through Ginnie Mae issued mortgage-backed securities, the vast majority of which are now fixed rate loans that require the borrower to take out the full principal limit at closing. In the nine months from March to December 2009, the percentage of reverse mortgages that were fixed rate, full draw loans rose from less than 3 percent to 70 percent of the market where it has remained since. The benefits to lenders and investors of these fixed rate, full draw loans are apparent – easier to sell on the secondary market, higher fees from investors and servicers to originators, and the potential to market bank accounts and other products.

However, the potential benefits, costs, and risks to consumers from fixed rate, full draw loans are much more mixed. The rapid transformation of the reverse mortgage industry has rendered many current TILA disclosure and consumer protections inadequate or obsolete. It is important that regulatory changes provide important new "meaningful benefit to consumers" grounded in a thorough understanding of how this transformation is affecting consumers. Among other things, new forms of disclosure are needed to show just how much more expensive such loans can be for borrowers who do not need to borrow the full principal limit at closing. Moreover, borrowers who take out large lump sums may be especially vulnerable to unethical and deceptive marketing practices used to entice them to purchase financial or insurance products that are not in their interest. Such lump sums and purchases of financial products may also have tax consequences and may negatively affect eligibility for public benefit programs. Since home equity is the most important form of savings for most older people, new forms of disclosure are needed so that consumers can better understand the long-term consequences of taking out the full principal limit early in retirement years.

The proposed rule has numerous references to the differences between "closed-end" and "open-end" loans – a distinction that is not very applicable to reverse mortgages where virtually all loans are open end as we understand that term. The proposed rule would greatly benefit from being reconstructed to recognize that the world of reverse mortgages is not divided between open- and closed-end loans, but between adjustable rate, line of credit loans and fixed rate, full draw loans. A better understanding of this important new distinction in reverse mortgages would improve some of the recommended changes in this proposed rule in ways we discuss below.

<u>FEES PRIOR TO COUNSELING</u>

Under the proposed rule [FR page 58711, Section 226.40 (b) (2)], a creditor may accept an application for a reverse mortgage and begin to process the application (for example, by ordering an appraisal and title search) before the consumer has obtained the counseling required under 226.40 (b) (1). In addition, a creditor can collect fees, including application fees, prior to the consumer receiving counseling. The proposed rule states that the fee is refundable if the consumer decides not to enter into a reverse mortgage transaction within three business days of having received counseling.

The proposed rule represents a significant change from HUD's current requirements and policies regarding reverse mortgages (Mortgagee Letter 2004-25, 6/23/2004) which states that the lender cannot charge the borrower an application fee, an appraisal fee, or charge for any other HECM-related services prior to the completion of counseling. "The mortgagee may only proceed to process the initial HECM loan application once the counseling is complete, as evidenced by the signed and dated counseling certificate."

The practical impact of the proposed rule would be to severely limit meaningful consumer choice because many potential borrowers feel a sense of obligation to proceed with the transaction once the lender has incurred expenses and/or the consumer has advanced his/her own funds. Not only does it allow the lender to collect fees prior to the counseling, but the only proposed disclosure of the refundable nature of these fees is in a single line at the end of the proposed three-page 'Open-End Reverse Mortgage Early Disclosure Form', (Appendix K), with no affirmative requirement that the creditor explain the refundability of the fees.

Consistent with current HECM requirements, AARP strongly recommends that creditors be prohibited from requiring borrowers to advance any funds or pay any fees (except for the counseling fee) prior to receiving counseling. AARP further recommends that this prohibition apply to all reverse mortgage loans, both HECM and proprietary loans.

COUNSELING REQUIREMENT AND COUNSELOR QUALIFICATIONS

The proposed rule [Page 58711, Section 226.40 (b) (1)] would require counseling from a counselor or counseling agency that meets the counselor qualification standards established by HUD, or "substantially similar qualification standards."

The consumer protections under the current HUD counseling protocols are unique in the mortgage industry and were created to protect a potentially vulnerable population. HUD has developed counseling requirements over many years in collaboration with various stakeholder groups including HUD-certified counseling agencies, AARP, Neighbor Works America, industry groups, and individual reverse mortgage counselors. These stakeholders have invested time, energy and funding to develop and implement:

- training programs;
- a detailed and extensive counseling protocol;
- in-depth loan analysis and comparison software;
- counseling support; and
- a HUD HECM roster of trained counselors.

Under this system, counselors have passed a rigorous test, must meet continuing education requirements, and are obligated to follow the HUD HECM Counseling Protocol. No other standards are "substantially similar," and no body currently exists to oversee and certify the quality of counseling apart from the HUD certification process. To allow counseling to be done under "substantially similar qualification standards" both devalues the established training and certification protocols established by HUD and opens the door to substandard counseling not subject to oversight or validation by any regulatory body.

AARP strongly supports the extension of the requirement for counseling that currently applies only to HECMs to all reverse mortgages, but we also urge the Board to require that such counseling be provided by a counselor or counseling agency that meets standards established by HUD.

SUITABILITY

The proposed rule [Page 58711, Section 226.40 (b) (3)] would require counselors to "include information regarding....suitability to the consumer's financial needs..."

The proposed rule imposes a new obligation on the counselor that is in direct contradiction to the role defined by HUD requirements. Under the HUD HECM Counseling Protocol (HUD Handbook 7610.1, May 2010) the counselor's role is defined as educating the consumer about the features of reverse mortgages and other financial options that may meet the consumer's needs. The counselor should not tell the client/consumer whether to proceed with a reverse mortgage or which reverse mortgage product to use, but should provide guidance and resources to enable the client/consumer to make an informed decision about what is right for them. As page 116 of the Handbook puts it, "The [HECM counseling] certificate does *not* represent an opinion or decision by the counseling agency about the suitability of a reverse mortgage for the client." (emphasis in original)

Section 1076 (b) of the Dodd-Frank Act requires the CFPB to conduct a study focusing on "protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the *suitability* of a borrower in obtaining a reverse mortgage for such purpose." (our emphasis)

AARP believes that this provision in Dodd-Frank clearly intends for the CFPB to deal with the thorny issues related to the responsibility for determining the "suitability" of reverse mortgages after studying the complex issues related to industry marketing practices. We also believe that the Dodd-Frank bill intends that a determination of "suitability" should be made in the context of the transaction between the lender and the borrower – that lenders, not counselors, have responsibility to prevent loans for products not suitable for reverse mortgage borrowers. Finally, we believe that "protecting consumers" -- not protecting lenders from liability risk -- is the standard for responsibility in determining "suitability." Shifting the liability risk from lenders to counselors would not solve the issues related to suitability and clearly would not serve the interest of protecting consumers.

AARP urges the Board to withdraw this portion of the proposed rule and defer the issue of the "suitability" of reverse mortgages to the new Consumer Financial Protection Bureau (CFPB) authorized by Dodd-Frank.

INDEPENDENCE OF COUNSELORS

AARP supports the Board's recommendation on forbidding lenders from providing compensation to counselors or counseling agencies [FR Page 58711, Section 226.40 (b) (6) (i)]. This prohibition extends the prohibition on such compensation in the Housing and Economic Recovery Act of 2008 for HECM loans. Counselors have reported that when creditors provide an agency with 'donations' to support the general operations of the agency (including reverse mortgage counseling) there often has been a stated expectation on the part of the creditor that the agency will provide that creditor's customers with preferred scheduling or expedited counseling and/or that the agency will promote the creditor's own proprietary products. We recognize that additional financial resources to support reverse mortgage counseling are necessary to deal with the substantial amount of uncompensated counseling now occurring, and we recommend that this issue be referred to the Consumer Financial Protection Bureau for further study.

Section 226.40 (b) (6) (ii) of the proposed rule would require the creditor to provide the consumer "a list of at least five counselors or counseling agencies meeting the requirements…." The current HECM rules require creditors to provide the consumer with a list of at least ten unaffiliated counseling agencies (HUD Mortgagee Letter 2009-10, March 2009). The proposed rule could be read to allow a creditor to provide a consumer with a list of five counselors working for the same counseling agency or five counseling agencies affiliated with the same national intermediary.

AARP recommends that the Federal Reserve requirements track existing HECM rules regarding steering consumers to preferred counselors – i.e., that the creditor be required to provide a list of at least ten unaffiliated counseling agencies that includes only those that are listed on the HUD HECM Roster.

DEFINITION OF CONSUMER

The proposed rule [Section 226.40 (b) (7)] defines "consumer" as "all persons who, at the time of origination of a reverse mortgage...will be shown as owners on the property deed of the dwelling that will secure the applicable reverse mortgage." It is the "consumer" who must receive counseling under the proposed rule.

This definition excludes homeowners who are presently on the deed to the property but who will be removed from the deed at or prior to closing. Under this proposal, if one spouse removes the second spouse from the deed in order to qualify for a reverse mortgage, the second spouse need not be counseled about the financial impact of the decision (e.g., loss of housing upon the death of the first spouse, loss of home equity, etc.). The decision to obtain a reverse mortgage that will include only one spouse poses significant risks to the non-borrowing spouse and the decision should be reached only after careful consideration by both spouses who have had the benefit of counseling.

In the current financial crisis, we understand that many homeowners who are desperate to save their homes may consider drastic steps. We are troubled by the recent wave of foreclosures and evictions that are displacing surviving spouses of HECM borrowers. The HECM statute explicitly provides protection from displacement for homeowners, including the spouse of the homeowner. [U.S.C. 1715-20(j)] AARP believes HUD must take steps to ensure their protection. In our view, the proposed definition of "consumer" will contribute to, rather than resolve this problem.

AARP urges that the definition of "consumer" be expanded to include not only all parties who will be shown as owners on the property deed of the dwelling securing the reverse mortgage, but also those other parties (*e.g.*, "non-borrowing spouses") as identified in HUD Mortgagee Letter 2006-25. This Mortgagee Letter recommends counseling for spouses who will be removed from title in order to allow the other spouse to obtain the reverse mortgage; for spouses who are ineligible for a HECM because the spouse is not yet 62 years old but is on title; and for spouses who are not currently on title to the property.

AARP further urges that the proposed rule require (not merely "recommend") that counseling be provided to those spouses described in HUD Mortgagee Letter 2006.25. This requirement would not impose any undue burden upon creditors or the process because many creditors presently require that non-borrowing spouses receive reverse mortgage counseling. In any event, the benefit far outweighs any potential burden and provides additional consumer protection and education to non-borrowing parties who will be impacted by the reverse mortgage.

ADVERTISING

The proposed rule [Section 226.33 (e) (1) to (10)] would allow creditors, either in advertising or in promotional materials, to use terms that are incorrect (with regard to reverses mortgages) or potentially misleading, as long as the advertising or promotional materials include an "equally prominent and closely proximate statement" that discloses that there are exceptions to the incorrect or misleading statement that either contradict or limit the scope of the incorrect or misleading statement.

The proposed rule goes too far in allowing a creditor to make whatever sort of statements the creditor wishes, to the detriment of the consumer. By allowing the industry to engage in what is essentially deceptive advertising, the proposed rule would effectively allow the industry to obfuscate the true nature of reverse mortgages and sanction deceptive practices on the part of the creditor. To present incorrect or misleading statement with accompanying 'disclosures' would create the very 'information overload' about which the Board expressed its concerns (Pages 58655 to 58659 of Federal Register, Volume 75, Number 185, Sept. 24, 2010).

AARP strongly recommends that the reverse mortgage industry be prohibited in all cases from making the kinds of deceptive statements included in Section 226.33 (e) (3) through (9) in their advertising and promotional materials. This issue should be addressed by the CFPB in conjunction with the Federal Trade Commission's Bureau of Consumer Protection, which has jurisdiction over deceptive advertising practices by non-bank financial entities.

ANTI-TYING RULES

The proposed rule would extend prohibitions that currently exist under the HECM program on "requiring the purchase of other financial or insurance products" by reverse mortgage lenders. However, it creates a "safe harbor" of ten days following the consummation of a reverse mortgage loan after which a lender is "deemed to have complied" with this requirement.

Some of the worst abuses of the HECM program have come through the marketing of financial and insurance products that have no demonstrably beneficial impact on borrowers. The proposed rule's creation of a 'safe harbor' for such practices violates the Housing and Economic Recovery Act of 2008, which has no such time limit on an absolute prohibition that lenders "not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity." Moreover, the proposed rule also preempts action from the CFPB as specifically authorized in the Dodd-Frank legislation, which authorizes the CFBP to issue rules "protecting borrowers with respect to obtaining reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purposes." Both acts authorize studies of this issue, which have not been conducted, and further rulemaking based on that research.

AARP supports extending prohibitions on lenders requiring borrowers to purchase any other financial or insurance product not customarily required to secure the loan. However, AARP strongly opposes the inclusion of a "safe harbor" that would effectively open the door for the "cross–selling" of any financial or insurance products to a reverse mortgage borrower so long as it is done 10 days after the loan has been made.

AARP once again strongly recommends that the Board withdraw this portion of the proposed rule and defer to research and rulemaking by the CFPB as authorized by Dodd-Frank. Any final rule should bar creditors, their affiliates, and/or their related entities from benefiting from a reverse mortgage transaction as a result of their selling the borrower a financial or insurance product, or by selling the customer's name (as part of a list or individually) to the broader financial services industry after the consummation of the reverse mortgage transaction.

In addition, AARP opposes the use of reverse mortgage proceeds for the purchase of any form of credit insurance, debt cancellation or debt suspension coverage. Rather than eliminate the need for any disclosures regarding such products, the rule should specifically prohibit both the use of reverse mortgage loan proceeds for the purchase of such products and specifically prohibit the marketing and provision of such products by a creditor or its affiliate or related entity to a reverse mortgage borrower.

While the proposed rule would restrict or prohibit a creditor from referring or cross-selling other financial products, insurance products, or financial services to a reverse mortgage borrower, there is no prohibition in the proposed rule against the affiliate or related entity of a creditor referring a homeowner to the creditor for a reverse mortgage. In other words, a "financial planner" who sells a homeowner on the idea of a deferred annuity is not prohibited from then sending that homeowner to a creditor/lender with whom the financial planner is affiliated in order to obtain a reverse mortgage and thus obtain the funds to purchase the financial product. The initiation of such transactions by an affiliate or a related entity of a creditor/lender should be prohibited without exception.

AARP further recommends that the list of prohibited "financial products" included in Section 226.33 be expanded to include savings accounts, money market accounts, certificates of deposit, time deposit accounts, and transaction accounts. Borrowers should have the freedom to place their reverse mortgage loan proceeds wherever they choose.

Finally, on page 58646 of the commentary, the Board asked for comment regarding the circumstances under which the cost of, and payments from, an annuity should be included in the Loan Balance Growth table [Section 226.33 (c) (8)]. Since AARP strongly recommends that no creditor, its affiliate or related entity be allowed to market, sell or promote the use of reverse mortgage loan proceeds for the purchase of an annuity, any disclosure of the cost of an annuity would only serve to confuse the consumer and might create a presumption that the consumer must purchase the annuity.

DISCLOSURES

The proposed Rule stipulates in 226.33 (b) that the creditor is to provide disclosures to the borrower in a form substantially similar to Forms K-1 "Open-End Reverse Mortgage Early Disclosure Model Form," K-2 "Open-End Reverse Mortgage Account-Opening Disclosure Model Form," or K-3 "Closed-End Reverse Mortgage Model Form." These forms include a description of 'Payment of Loan Funds' and 'How the Loan Balance Grows' and would be provided to the borrower within three business days of the borrower having made application for the reverse mortgage.

1. Replacing "Total Annual Loan Cost" with "How the Loan Balance Grows" AARP applauds the Board for conducting useful research regarding consumer experiences of current TILA disclosures and how those disclosures might be improved. The report issued in July 2010 entitled "Design and Testing of Truth in Lending Disclosures for Reverse Mortgages" convincingly demonstrated that current disclosures have not been very effective in improving consumer understanding of some key features of reverse mortgages. In addition, current disclosure requirements were tailored for the adjustable rate, line of credit loans that have historically dominated in this market and are not well suited for comparing these loans with the fixed rate, full draw loans that now dominate the market.

   AARP's recommendations for the future of TILA disclosures for reverse mortgages would build on the approach outlined in the Board's proposed rule with some important improvements that we believe are necessary to make the disclosures more effective in comparing reverse mortgage options. Perhaps the easiest way to convey where AARP's recommendations build upon the Board's recommendation is to focus on the table labeled "How the Loan Balance Grows" near the end of each of the model forms included in Appendix K.

   The Board is proposing to eliminate the table of "Total Annual Loan Cost" (TALC) rates that are currently required by TILA. The TALC table provides an all-inclusive measure of costs expressed as annual rates at three points in time (two years, life expectancy, and life expectancy plus 40 percent) and three appreciation assumptions (0, 4, and 8 percent). The new "How the Loan Balance Grows" approach would replace the annual rate approach with dollar numbers that would illustrate the growing loan balances over three periods of time (1, 5, and 10 years). The growing loan balance would be expressed in three components – How much money will you have received? How much money will be owed for interest and fees? How much will be owed altogether?

   AARP strongly supports the Board's approach to using dollar amounts to illustrate growing loan balances as long as those amounts reflect the full inclusion of all costs as is currently done with the calculation of the TALC rates. AARP also supports expressing those growing balances in a way that clarifies how much the loans cost in fees and interest charges and how the total loan balance will grow over time.

However, we continue to believe that the time periods should be linked to life expectancy, since consumers need to plan for using their home equity over their remaining years. The ten-year maximum under the Board's proposed rule would clearly not be adequate for borrowers in their early and mid-60s whose life expectancies are 18 years or more. It is also important to understand that, by definition, half of the population can be expected to live longer than life expectancy, so a period in excess of life expectancy is necessary for adequate planning. Accordingly, AARP also recommends keeping the three periods currently required for the TALC disclosure and adding a fourth period at one half of life expectancy, since HUD data indicate that many borrowers terminate their loans well before life expectancy.

2. Payment Options and Disclosures
As noted in our introductory comments above, AARP believes that very few reverse mortgages qualify as true "closed-end" loans. At the very least, the terms "open-end" and "closed-end" are unclear and not very helpful when used to describe reverse mortgages. Rather than building the disclosures around these terms, we recommend that the Board examine the types of disclosures that would be helpful in understanding and comparing the differences between fixed rate/full draw loans and adjustable rate loans that are all based on a line of credit approach despite different payment options. For example, the proposed Rule [at 226.33(c)(7)(v) re Transaction Requirements] does not require disclosure of any minimum draw requirements because "such a requirement is unlikely to apply to reverse mortgages." Unfortunately, the requirement to draw the full principal limit at closing has totally transformed the reverse mortgage market over the past year and a half. This new reality necessitates new disclosures to educate and protect consumers.

Accordingly, AARP recommends that all potential borrowers receive disclosures within three business days of making application for a reverse mortgage loan that would provide "How the Loan Balance Grows" tables for three payment options: a fixed rate/full draw loan, a monthly adjustable rate line of credit, and monthly adjustable rate monthly advances (based on the tenure of the mortgagor).

These tables could be included in modified versions of the disclosure models used in K-1 and K-3 of the proposed rule where potential borrowers would receive a disclosure in line with their expressed intentions regarding a payment type. But the additional tables would be included at the end so that that they could make cost comparisons at the time that they are making decisions. For example, if the borrower has indicated to the creditor at the time of loan application that the borrower chooses the fixed rate/full draw loan, then the "How the Loan Balance Grows" section would include tables showing how the loan balance would grow under that approach as well as comparative tables for alternative line of credit disbursements (according to the methodology discussed below) and monthly/ tenure advance payments.

Disclosing how all three different means of disbursement affect the Loan Balance Growth will promote more reasonable and equitable disclosure of the Loan Balance Growth so that the borrower can see more clearly the true costs of each product, make an informed decision among payment options, and create financial plans that are the most beneficial for their specific situations.

3. Loan Balance Growth Calculation Issues

The proposed rule includes underlying methodologies for creating the table in the "How the Loan Balance Grows" section. This methodology depends on the amount of the initial advance – (1) if the consumer receives an initial advance, periodic payment or some combination thereof which accounts for fifty percent or more of the loan amount, the creditor is to assume that the consumer will take no more advances; and (2) in all other cases, the creditor is to assume that the consumer will take the entire loan amount at the time of closing.

We agree that, in cases where the consumer takes an initial advance (which includes the payment of the reverse mortgage fees and paying off all existing liens) of fifty percent or more of the loan amount, experience and practice indicate that consumers will generally not take additional advances. In such cases, the methodology described above, wherein the Loan Balance Growth chart is created on the assumption that the borrower will take no additional advances, is consistent with consumer practice and the experience of the industry ("Home Equity Conversion Mortgage Terminations: Information to Enhance the Developing Secondary Market", Szymanoski, Enriquez, & DiVenti, CityScape: A Journal of Policy Development and Research, Volume 9, Number 1, 2007).

However, in all other cases where the initial advance (for fees and existing liens) is less than fifty percent of the loan proceeds, we recommend that the methodology for computing the Loan Balance Growth chart be that the initial advance is computed at fifty percent of the loan proceeds and that the consumer will take no more advances, rather than having the creditor assume that the consumer will take the entire loan amount at closing.

The proposed Rule at 226.33(c)(8) re Loan Balance Growth stipulates that in calculating projected future loan balances the creditor must assume "that the dwelling's value does not change." This approach – when coupled with the proposal to include liability limits in the calculation – would grossly understate and materially misrepresent the consumer's potential repayment obligation, which can easily grow to exceed the home's value at closing. The potential magnitude of a consumer's total debt may well be the single most important item of disclosure related to reverse mortgages and should not be artificially minimized. When a creditor calculates a consumer's available loan amount, the calculation includes an assumption that the property will appreciate in value. It would be highly misleading, therefore, to disclose loan balance growth amounts based on an assumption of zero growth in the home's value. Instead, these projections should reflect the true potential future obligation by presenting loan balance growth unimpeded by any potential liability limit. To make the consumers aware of potential liability limits, however, the table should include a note that states "The loan balances in this table may be subject to limits related to your home's future value".

Section 226.33 (d) (4) refers to the format of the Loan Balance Growth charts (K-1, K-2, K-3). AARP recommends that, in calculating the interest that will be included in the second line of these charts ('How much will be owed in interest and fees'), the creditor use the loan's "expected" interest rate, whether fixed or variable, to calculate the accrual of interest. This rate is well-defined in the HECM program, and an analogous expected rate for proprietary loans could be based on HUD's methodology.

4. <u>Minimum Draw Disclosures</u>
   The proposed Rule at 226.33(c)(7)(v) does not require disclosure of minimum draw requirements. But since they have come to dominate the market and can be harmful to some consumers, these requirements clearly should be disclosed. Moreover, the Early Disclosure form should include a statement that:

   - interest is charged on the full amount of a required minimum draw;
   - interest is not charged on funds left in a line of credit until those funds are withdrawn by the consumer;
   - funds remaining in a line of credit grow larger (if applicable); and
   - includes the rate at which credit line funds will grow.

5. <u>Tax Deductibility Disclosure</u>
   AARP recommends that the proposed rule include a disclosure requirement with regard to the tax deductibility of interest (August 2009 Closed-End Mortgage Proposal). Despite the fact that the interest on a reverse mortgage accrues and is not deductible until it is actually paid, borrowers may either assume (or be told by a loan originator or mortgage broker) that reverse mortgage interest would be tax deductible. Borrower should receive a clear disclosure that the interest on a reverse mortgage loan is not tax deductible until such time as the interest is paid – *i.e.,* for most reverse mortgage loans, at the time when the loan is paid in full through the sale of the property. We do not believe that such disclosure would hinder, complicate, or make more expensive the credit process for reverse mortgages. We disagree with the Board's assessment [FR page 58652] that such a disclosure would be "unlikely to provide a meaningful benefit to reverse mortgage consumers."

6. <u>Annual Percentage Rates</u>
   Annual Percentage Rate (APR) calculations are based on the term of the loan, and in forward mortgages the assumption is that all loans will run to term. However, HECM loans do not have a specified term – all HECM loans mature at some indeterminate future date or occurrence (*e.g.* the death of the last surviving borrower, the sale of the home,

etc.). If the disclosures proposed in Appendix K are to include an APR disclosure, then there must be further disclosure about assumptions used in calculating that APR (*e.g.*, borrower's life expectancy as in the current commentary on Section 226.18 5b (5) (iii)-4, 5b(d) (12) (xi)-10 and 17(c) (1)-14, Page 58641). Further, while there is a protocol for disclosing APR for forward mortgages with variable interest rates, the same protocol regarding assumptions about interest rate variations in the future should be applied to the APR disclosure on variable-rate reverse mortgages.

The proposed disclosures in Appendix K are woefully inadequate in disclosing the true APR of reverse mortgages, whether adjustable-rate or fixed-rate. In fact, the examples provided in Appendix K for all three types of disclosure ('Open-end Early Disclosure', 'Open-end Account-opening Disclosure', and 'Closed End Disclosure') all incorrectly disclose the APR as the initial interest rate, without factoring in the cost of loan origination fees, adjustments in the interest rate in the future, and other fees that should be part of the APR calculation.

<u>ATTACHMENT A – "Key Questions"</u>

The proposed Rule (Part 226.33 (b) (1) describes Attachment A titled 'Key Questions to Ask about Reverse Mortgages' – a document that is to be provided by creditors to borrowers. While AARP supports disclosures that describe the features and elements of a reverse mortgage in simple and understandable language, we are concerned that the proposed 'Key Questions' include a statement that is one of the 'seven deadly sins' of advertising described in Section 226.33 (e). Specifically, the proposed document states in paragraph 3 that '….you can exchange your home equity for cash and <u>do not have to make monthly payments</u>'. By the Board's own proposed Rule, such a statement would require additional statements/disclosure that a consumer must pay property taxes and insurance premiums.

Both paragraphs 3 and 5 of the "Key Questions" state that the borrower should talk with a 'HUD-approved reverse mortgage counselor or financial advisor' for more information. This statement implies that <u>either</u> there are "HUD-approved" financial advisors or "HUD-approved reverse mortgage counselors" who also function as "financial advisors." As written, the statement is at best misleading, and at worst could lead a borrower to think that a counselor working for a non-profit agency has the same expertise and training as financial advisors or planners with other certifications.

The "Key Questions" in paragraph 4 describe the categories of fees that could be charged as part of a reverse mortgage transaction. In the description of "Closing costs," there is no detail or distinction made between third-party vendor costs (which are not regulated by HUD) and loan origination fees that are collected by the creditor (and are regulated by HUD).

The 'Key Questions' in paragraph 7 describe the events that could cause a reverse mortgage to become due and payable or could cause a borrower to be subject to foreclosure. While the 'Key Questions' describe the 12-month non-occupancy factor for medical reasons, the 'Key Questions' are silent on the other non-occupancy factor, *i.e.*, a reverse mortgage could be due and payable if the borrower(s) does not occupy the home as principal residence for the majority of the calendar year. Also, the 'Key Questions' in this paragraph do not adequately describe the requirement that at least one of the borrowers must occupy the home as principal residence, and could confuse borrowers by suggesting that if one party was hospitalized for an extensive period of time, the co-borrower could be in jeopardy of having to repay the reverse mortgage loan.

RECOURSE LOANS

Section 226.33 (c) (9) (iii) refers to the disclosure of repayment options on reverse mortgages that allow recourse to assets other than the home equity. The inclusion of this reference implies that there now is or could be a reverse mortgage product with such recourse. Reverse mortgages have always been non-recourse to the borrower (and the borrower's heirs).[1] The HECM statute's language indicates the clear intent of Congress to designate HECM loans as non-recourse loans. By including reference to recourse loans in the Rule, the Board is giving tacit approval to recourse loans. Accordingly, AARP recommends that the Rule clarify that:

- All reverse mortgage loans (HECM and proprietary) are non-recourse; and
- If borrowers/heirs want to pay off the reverse mortgage and retain the home, they will owe the lesser of the appraised value of the home or the amount of the loan.

SUMMARY

Reverse mortgages can potentially play an important role as a tool for financial security for older homeowners. Because they affect the most important asset of most older people, developing disclosures that enable consumers to understand the complicated decisions they are making in taking out such loans is an important responsibility. Moreover, the potential for unethical marketing practices is enormous when such loans make large amounts of money available. Because nearly all reverse mortgages are currently insured by FHA and nearly all are funded by mortgage backed securities issued by another government agency, Ginnie Mae, the public responsibility for ensuring that consumers are adequately protected is heightened.

While some aspects of this proposed rule would improve consumer disclosures and expand consumer protections, a number of problems still remaining in this proposed rule and the clear intent of Congress argue for deferring the issuing of a final rule until these issues can be studied carefully by the Consumer Financial Protection Bureau. AARP respectfully requests that the CFPB be permitted to reissue a proposed rule addressing the issues in this proposed rule after such study has been made.

Part II. Proposed Rule Revisions Relating to Consumers' Right to Rescind

BACKGROUND: The Board's Exemption Authority and Rescission Proposal

AARP is concerned about the many areas in which the proposed rule would curtail, if not effectively eliminate, consumers' right to rescind a mortgage transaction. As mentioned earlier, and stated in our November 24, 2010 letter, AARP questions the Board's use of its exemption authority to adopt regulations that so directly undermine this important consumer protection. The Board's rescission proposal, in contrast to a number of others, fails to make and publish a record of its consideration of the exemption factors or its rationale for the rules it proposes, as required by Section 105 (f)(2) of the Truth in Lending Act. [15 U.S.C. § 1604(f)(2)]

The rescission proposal fails in the threshold test of the Board's exemption authority. In particular, it does not consider whether the existing rescission rules provide a "meaningful benefit to consumers in the form of useful information or protection." [*Id.*] The proposal also evidences no consideration of the factors that are a required predicate to the exercise of the Board's exemption authority. First, despite section 1604(f)'s prohibition on the use of exemption authority in relation to high cost (HOEPA) mortgages under section 1602(aa), the proposal broadly curtails the right to rescind both of HOEPA and non-HOEPA mortgages. To the extent the proposed rescission rules affect a particular "class of transactions," they apply *only* to mortgages secured by a principal residence – i.e., those that are designated as not readily amenable to the exemption. 15 U.S.C. § 1604(f)(2)(D). Next, the Board's proposal evidences no consideration of the kinds of borrowers that will be impacted by the rule change. [15 U.S.C. § 1604(f)(2)(C)] In our experience, borrowers seeking to rescind are most often those who have been the victims of one or more predatory and abusive mortgages that have left them financially ravaged and facing the loss of their homes. The proposal fails to acknowledge this reality and leaves consumers more vulnerable to future potential abuses. The Board cannot rest the exercise of its exemption authority solely on the expense or complexity of compliance. [15 U.S.C. § 1604(f)(2)(B)]

The Board's proposed rescission rule nearly uniformly undermines the TILA right to rescind. The proposal restricts the availability of rescission by: (a) proposing a notice of right to cancel that gives the consumer incomplete and/or inaccurate information about his or her rights; (b) introducing a complex set of "tolerances" that treat disclosure errors within certain boundaries as "accurate" for purposes of rescission; and (c) denying the right to rescind a mortgage that has been refinanced or paid off. The proposal also erects an often insurmountable obstacle to the consumer's ability to accomplish rescission by reordering the steps of rescission such that the burden of tendering the balance owed after rescission is shifted to the consumer prior to any action by the creditor. This reordering leaves the borrower vulnerable to foreclosure, directly impacts the bargaining position of the parties to the rescission, and affects the consumer's ability to negotiate loan modifications and other work outs. While AARP understands the Board's interest in simplifying rescission, we believe the proposal is fundamentally damaging to consumers.

NOTICE OF RIGHT TO CANCEL [FR Page 58701, Section 226.23(b)]

AARP applauds the Board's efforts to determine the most effective format for communicating the right to cancel to the consumer. We are, however, concerned about a number of the provisions within this proposal.

The Board proposes to eliminate the requirement that each borrower be provided two copies of the notice of right to cancel because of industry concerns that the two-copy rule increases litigation risk. It is puzzling that such a basic requirement as providing two copies should pose significant compliance problems for the industry. There are typically 30-45 signatures required of borrowers in refinance transactions. It is not unusual for every page of the Note and Mortgage to be initialed by each borrower. The 2-copy rule is easily complied with by simply obtaining two signatures on two distinct documents – one marked as "1 of 2" and the second marked "2 of 2." In our experience, this simple step would go a long way to resolving any litigation risk.

AARP believes that the requirement for two copies being provided be maintained.

AARP is not opposed to the "tear-off" portion of the proposed notice of right to cancel We are, however, concerned that the language of the proposed notice stating, "If you want to cancel this loan, you must submit the bottom portion of this notice," misinforms the borrower that he or she must use the tear-off form to rescind. The statement is simply incorrect. A borrower can exercise the right to rescind using anything in writing. We are concerned that borrowers who wish to rescind – especially after the three days have expired – will take this misleading statement at face value and will not exercise the right if they cannot locate the tear-off portion, if it has been torn, damaged, etc.

AARP recommends that the statement requiring the use of tear-off portion of the notice should either be deleted or corrected to reflect that the consumer can use any statement in writing to rescind.

While AARP acknowledges the complexity of the alternative deadlines for expiration of the right to rescind, we believe the Board's proposed statement in the notice that "in certain circumstances, your right to cancel this loan may extend beyond this date" is wholly insufficient. The complete lack of detail or reference to where the borrower might find more details leaves the borrower at an informational dead end.

At a minimum, AARP suggests inserting language such as: "If the creditor does not give you correct disclosures before you sign the loan documents, your right to cancel may extend beyond this date."

The Board proposes that, if the creditor cannot provide an accurate calendar date on which the three-day rescission period will expire, it should insert the date it "reasonably" and "in good faith" expects the period to expire. We believe situations that give rise to this uncertainty are very rare and are generally able to be accommodated. As such, we are concerned that this provision could be too readily manipulated by market participants who are *not* acting in good faith. Further, standards such as "reasonable" and "good faith" inject the element of intent into rescission. It is not in the interest of the creditor or the consumer to have a rescission claim rest on an element so ill suited to a strict liability statute such as TILA.

Therefore, AARP recommends deleting the provision giving leeway in stating the date on which the right to rescind expires.

MATERIAL DISCLOSURES AND TOLERANCES [FR Page 58700-58701, Section 226.23(a)(5]

While there are potentially hundreds of TILA disclosure violations, rescission is only available for failure to accurately and timely provide "material" disclosures. The proposal makes sweeping changes to the definition of material disclosures. We recognize that a changing mortgage market may require adaptations and believe that many of the new disclosures will prove helpful to consumers. We are, however, very concerned about the changes involving the consumer's payment obligations and the tolerance in the disclosure of the payment.

Specifically, the proposal eliminates the disclosure of the total of payments. We have found that the total of payments disclosure is useful to consumers in comparing the long term costs of mortgages. For example, they can compare the total cost of a 15-year versus 30-year mortgage. We also believe that the total of payments disclosure singularly, by its sheer size, communicates the true cost of the credit over the life of the loan. **Thus, AARP opposes eliminating the disclosure of the total of payments.**

Additionally, AARP is very concerned about the proposed tolerance for the payment summary, which allows an understatement of up to $100 in the monthly payment. This is unacceptable. For many consumers, an understatement of $100 is the difference between affording and not affording the mortgage. There is no justification for applying such a generous tolerance to the payment summary. **AARP recommends a tolerance of no more than $10.00 in the payment summary.**

REFINANCING AND PAYOFF TERMINATING RESCISSION RIGHTS [FR Page 58700, Section 226.23(a)(3)]

The Board proposes for the first time to add the refinance or payoff of a mortgage as an event that terminates the right to rescind. **AARP does not believe terminating the right to rescind refinanced or paid off loans can be justified as providing a meaningful benefit to consumers or as advancing the goal of consumer protection.** It is, thus, an inappropriate exercise of the Board's exemption authority and should be eliminated.

The ability to rescind prior mortgages within the three-year statute of limitations has been instrumental to saving the homes of thousands of homeowners who were victimized by a series of predatory mortgages.[2] Terminating the right to rescind those mortgages gives the previous creditors free passes and deprives the homeowner of the return of fees and interest paid on those mortgages that may, especially in these times of depressed home values, be required to accomplish a loan modification and/or rescission on the current mortgage. As the Sixth Circuit noted, "Allowing the right of rescission to be exercised after a refinancing also comports with the statutorily identified purpose of the Act--'to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.' [15 U.S.C. § 1601(a)] The preservation of the right prevents a refinancing, even a refinancing prompted by the inadequately disclosed terms of an earlier loan or by the refusal of the bank to rescind the earlier loan, from insulating lenders from responsibility for their noncompliance."[3]

Most other courts have recognized that, despite the payoff or refinancing of a mortgage, the return of these fees and finance charges to the borrower means that there is still something to rescind.[4]

Again, AARP opposes eliminating the ability to rescind refinanced or paid off mortgages and urges the Board to delete this provision.

OBLIGATIONS WHEN THE CONSUMER RESCINDS [FR Pages 58702-58703, Section 226.23(d)]

The changes to the timing of tender are perhaps the most troubling of the Board's rescission proposals. We reiterate our concern that, while the Board proposes drastic curtailment of TILA's right to rescind, its rescission proposal makes little or no effort to justify its exercise of §1604(f) exemption authority. AARP believes the proposed changes relating to tender turn TILA rescission on its head and unjustifiably hold the consumer's rescission hostage to the tender obligation.

1. Rescission in Three Day Period Following Consummation [FR Page 58702, Section 226.23(d)(1)]

   During the three days following consummation and prior to disbursement, the Board's proposal honors the statutory mandates on the order of rescission and acknowledges that the consumer's rescission automatically voids the security interest. We have two suggested improvements to offer:

   A. The Board indicates that consumers are particularly concerned about being able to prove the receipt of their rescission notices within the 3-day period allowed. Faxes are generally available and have the advantages of being both quickly communicated to the recipient/creditor and providing evidence of transmission by the consumer. **In light of this, AARP suggests that allowing the consumer to communicate the rescission by fax transmission is a sensible step.**

   B. The Board suggests that, if the creditor fails to provide an address to which the rescission notice can be sent, the borrower can send it to the servicer. This is not possible because the servicer is not yet in place in the three days after consummation. In the absence of this information, the notice of right to rescind is ineffective.

   AARP believes the Board should require that the notice of right to cancel contain an address and fax number for the creditor or the creditor's agent.

2. Rescission after Disbursement but Not in Court [FR Page 58702, Section 226.23(d)(2)(i)]

This proposal significantly alters the statutory burdens of rescission, is not helpful to or protective of consumers, and places unwarranted control in the hands of a creditor who has acknowledged a material violation.

A. If a creditor acknowledges it has materially violated TILA, the statute's requirements are clear: the creditor must release the security interest and return all fees and interest to the borrower within 20 days. [15 U.S.C. § 1635(b)] Without identifying what is unclear about this obligation, the Board makes a proposal that purports to provide greater clarity to the consumer about the creditor's position on the rescission. In fact, however, the Board's proposal does not clarify but simply weakens the statutory protection. It shifts the burden onto the borrower to tender before the creditor has any obligation to return the fees and interest or to release the security interest. Especially in the foreclosure context, the release of the security interest is a critical element of the rescission process. The Board's reordering of the steps of rescission effectively shifts all the bargaining power to the creditor and leaves the borrower vulnerable to foreclosure. [5]

Thus, in AARP's view, the proposal that the borrower be required to tender all funds owing after the rescission and prior to any obligation on the creditor to return fees and interest dramatically undermines the right to rescind and should be withdrawn.

B. The proposal suggests that the determination of the tender amount and the timing of the consumer's tender be left to the creditor. This is not justified and will only serve to further tilt the balance of power in the rescission still further in the direction of the offending creditor at the expense of the borrower. Revelations in recent months and years have established the existence of very serious abuses in the nation's mortgage servicing industry, including failures to credit payments; failures to credit payments in a timely manner; and the assessment of late and other fees that have unjustifiably escalated mortgage loan balances all over the country. **Because of the known abuses, AARP believes the Board's reliance on mortgage servicers as the sole determiners of the tender amount owed is entirely misplaced and that the proposal should be withdrawn.** Even outside of court, rescission is somewhat inherently adversarial: the resolution of the dollar value of the rescission and the timing of tender are essential elements of the controversy and cannot fairly be left to one party to the dispute.

3. Effects of Rescission in a Court Proceeding [FR 58702-58703, Section 226.23(d) (2)(ii)]

The past several years have been the first since TILA's passage in 1968 that some courts have conditioned rescission on tender and/or insisted that the consumer plead the ability to tender in his or her complaint. In our view, the Board missed an important opportunity to clarify the incorrect analysis underlying these cases and to set the record straight by reaffirming both the right to rescind and the order of rescission as stated in TILA.

Instead, by insisting on tender first even when the rescission is before a court, the Board's proposal not only undercuts the consumer's right but also unnecessarily intervenes in the judicial resolution of the dispute on its merits and interferes with the court's ability to arrive at a solution that is equitable for all parties.

We recognize that a consumer's exercise of the right to rescind does not establish the existence of a material violation, just as the creditor's decision to reject that rescission is not dispositive of the merits. Once such a dispute is before a court, the timing and the steps of rescission can be handled in an orderly manner that preserves the rights of all parties. However, even in this context, the Board's proposal inexplicably insists that the borrower tender prior to release of any security interest.

AARP proposes a fairer resolution and one that is far more consistent with TILA. Many courts have recognized the need to balance the lender's obligation under TILA to release the security interest after a rescission against the value of allowing the rescission claim to be adjudicated on its merits.[6] These courts have required lenders who dispute rescissions to file a claim for declaratory relief and to post the release of the security interest and any funds it would owe the consumer if the rescission is upheld with the court pending a resolution of the merits. However, recognizing that TILA requires that the security interest be released as the first step, the Board should make clear that any action on a foreclosure must be stayed pending the court's resolution of the merits of the rescission and the proper tender amount, along with other claims such as unfair and deceptive practices that may have been raised by the consumer.

If the Court determines that the creditor has violated TILA, AARP believes it is appropriate for the Board to use its authority to require the creditor to work with the consumer on a loan modification or refinance.

SUMMARY

It is AARP's view that the rescission provisions of the proposed rule fail the threshold test of the Board's exemption authority. In particular, they do not consider whether the existing rescission rules provide a "meaningful benefit to consumers in the form of useful information or protection." Considering the current, long-term housing crisis, we find it difficult to justify the Board's exercise of its exemption authority to deprive consumers of the benefits and protections of rescission and to substitute rules that are far less protective. While AARP acknowledges the practical difficulties embedded in the rescission process, we do not believe the Board's rescission proposal is a fair or justified exercise of its exemption authority. We respectively urge that the rescission provisions of the proposed rule be withdrawn.

AARP appreciates the opportunity to respond to the Board's request for comments on these important questions. We would welcome any opportunity to discuss our comments with Board members and staff and to provide any additional information or materials the Board may request. Please direct any questions or requests to Diane Beedle with AARP's Government Relations and Advocacy Staff at dbeedle@aarp.org or (202) 434-3798.

Sincerely,

David Certner

David M. Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy
AARP

Endnotes:

[1] This is true despite HUD's issuance of Mortgagee Letter 2008-38, which purported to redefine non-recourse for HECM loans and to require that a HECM loan be paid in full if the home was being sold to a family member – even if the total amount owed on the HECM exceeded the appraised value and/or sales price. We believe that HUD exceeded its authority in issuing this Mortgagee Letter.

[2] AARP attorneys have used this provision for decades to defend older homeowners from foreclosure. *Ferguson v. First Gov't. Mortg. & Investors Corp.*, D.C. Super. Ct. CA # 9949-96; *William v. Central Money Mortgage,* D.D.C # 1:96-01993; *Travers v. Wells Fargo Bank, N.A.*, D.D.C, CA #09-1061; *Howard v. Countrywide Home Loans, Inc.*, D.D.C CA# 08-0510;

[3] *Barnett v. JP Morgan Chase Bank, N.A.* 445 F.3d 874, 877 (6th Cir. 2006).

[4] *Handy v. Anchor Mortg. Corp.*, 464 F.3d 760, (7th Cir. 2006); *Pacific Shores Funding v. Lozo,* 138 Cal. App. 4th 1342 (Cal. App. 2006); *Duren v. First Gov't Mortg. & Investors Corp.*, 2000 U.S. App. Lexis 15469, No. 99-7026 at *2 (D.C. Cir. June 7, 2000); *McIntosh v. Irwin Union Bank and Trust, Co.*, 215 F.R.D. 26, 30 (D. Mass. May 13, 2003); *In re Wright*, 127 B.R. 766, 770-71 (Bankr. E.D. Pa. 1991); *In re Steinbrecher*, 110 B.R. 155, 166 (E.D. Pa. 1990); *Nichols v. Mid-Penn Consumer Discount Co.*, 1989 U.S. Dist. LEXIS 4796, No. A-88-1253, 1989 WL 46682, at *6 (E.D. Pa. Apr. 28, 1989); *Abele v. Mid-Penn Consumer Disc.*, 77 B.R. 460, 464-65 (E.D. Pa. 1987).

[5] In the experience of AARP attorneys, if the creditor and borrower agree that there has been a material violation, the timing of the release of the security interest and payment of the tender are not normally a problem and are usually accomplished simultaneously. The more typical and more problematic scenario – where the parties do not agree to the merits of the rescission – is not addressed directly in the proposal.

[6] *See, e.g., Decision One Mortgage Co. v. Fraley*, 2000 WL 1889700 (6th Cir., Dec. 19, 2000) (aff'g. award of declaratory judgment to lender in suit it filed to resolve rescission); *Aquino v. Public Fin. Consumer Discount Co.*, 606 F.Supp. 504 (E.D. Pa. 1985) (suggesting lender may petition for declaration of rights or duties within 20 days after receipt of rescission notice*);* *Saxon Mortg. Servs., Inc. v. Hillery,* 2008 WL 5170180 (N.D. Cal. Dec. 9, 2008); *See also, Cooper v. First Gov't. Mortg. & Investors Corp.,* Order, Jan. 21, 2001 at https://ecf.dcd.uscourts.gov/doc1/04511207803.