



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

December 22, 2010

SENT VIA EMAIL: regs.comments@federalreserve.gov
"FRB Docket No. R-1390"

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

Dear Ms. Johnson and Governors:

I am writing on behalf of the lawyers and paralegals at Community Legal Services, past and present, who represent/have represented homeowners trying to keep their homes in the face of mortgage foreclosure, and on behalf of our clients, to insist that you not promulgate changes to the Truth in Lending Act that would eviscerate the right to rescind.

The proposed rule will undermine the chances of homeowners struggling against a mortgage lending system that is weighted in so many other ways in favor of lenders and servicers that commit wrongdoing at every turn.

Why, really, would you destroy this important homeowner protection?

I have been representing homeowners facing foreclosure for 13 years. Community Legal Services has had a large foreclosure/homeownership defense practice going back decades longer, such that CLS has represented thousands of homeowners in all. Across all the years, lawyers, homeowners and cases, we would all say that the right of rescission under TILA has been the single most important tool we have had for reaching equitable settlements with mortgage companies.

It is not that we have scores of court decisions affirming our clients' TILA rescissions. Rather, we have achieved through settlement loan modifications with the mortgage company foreclosing on the loan. The loan modifications reduce the debt to the amount of the TILA tender requirement and reduce the interest rate as necessary to make the payment clearly affordable. Making the ability to tender from the resources of the borrower a pleading requirement would kill this equitable and reasonable outcome.

My own cases over the years have included many clients who were victimized by predatory lending. Because the loan originators were as reckless with the TILA disclosures as they were with the underwriting, I have been able to raise TILA rescission in most such cases.

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Here are a few of the outcomes I was able to achieve for clients, loan modifications with the company that was foreclosing on the loan, because of the TILA right to rescind:

Senior citizen with \$1,000 per month in social security income and a recent subprime loan for \$50,000, payment without escrow \$482. Loan modification reduced the loan balance to \$26,000 and reduced the payment to \$209, including escrow.

Senior citizen with \$700 per month income. Subprime home repair loan, \$27,000, 11.9%, principal and interest payment \$278. Loan modification, \$10,000, 8.0%, principal and interest \$77.

Subprime loan of \$76,000, 10.5%, principal and interest payment of \$679.84. Loan modification reduced the debt to \$70,000, principal and interest payment \$258.73.

Subprime loan with a principal balance of \$31,200, an interest rate of 10.6%, an annual percentage rate of 11.9%, and monthly payment of \$345.85, loan modification reduced the debt to \$15,000 at 7%, reducing the payment from \$346 to \$135

Senior citizen with income of about \$950 per month. Subprime loan for \$33,300, 11.05%, monthly principal and interest payment of \$318.38. Loan modification reduced the debt to \$20,000 at 8%, principal and interest payment of \$146.75.

Disabled homeowner with just disability benefits as her income. The subprime loan for \$33,600 had monthly payments of principal and interest of \$405, the loan modification resulted in a debt of \$31,000 and a monthly payment of \$279 including escrow.

wanted a small home improvement loan, but the subprime lender instead refinanced her purchase money mortgage at an interest rate 8% higher than the purchase loan, with no proceeds that could be used for home repairs. The loan modification reduced the debt from \$18,000 to \$8,760, the monthly principal and interest payment was reduced to \$94.

Subprime loan, \$55,250, rate 10.75% ARM, principal and interest payment \$516; loan modification reduced the debt to \$50,000.00, rate to 7.0%, principal and interest payment \$333.

These are just a sample of my own cases, it's quite time consuming to look back and find the original loan terms and the loan modification terms. My colleagues and I have scores more like these. Each of these low income homeowners would have lost their homes if the TILA rescission rule had been the rule you are proposing now. The mortgage companies would have won their cases on the pleadings, because our very low-income clients would have had no way to make the tender payment as a lump sum.

The manner in which the tender requirement is enforced should remain open to the equities of the case, as recognized by many courts. For example, in *In re Bell*, 314 B.R. 54, 61-62 (Bkrtcy.E.D.Pa.,2004), the court found that "the borrower should have a reasonable time for repayment" and stated that the "court will set reasonable terms if the parties are unable to agree."



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In Mayfield v. Vanguard Savings & Loan Assoc., 710 F.Supp. 143, 148 (E.D.Pa.1989), the court found that the borrower's repayment should be in monthly payments of the amount prior to the refinancing, with a lower interest rate and principal balance. In Shepard v. Quality Siding & Window Factory, Inc., 730 F.Supp. 1295, 1308 (D.Del.1990), the court found that the proper tender was the value of the home repairs financed under the loan, in affordable monthly payments. As long as courts are, in the end, able to fashion the tender requirement in an equitable manner, mortgage companies will have incentive to settle with reasonable loan modifications.

Please do not issue the rule you have proposed.

Sincerely,

Elizabeth C. Goodell
Managing Attorney, Consumer Housing
Community Legal Services